

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285  
et al. :  
Plaintiffs :  
 : Washington, D.C.  
V. : Wednesday, June 11, 2008  
 :  
DIRK KEMPTHORNE, Secretary :  
of the Interior, et al. :  
 :  
Defendants : AFTERNOON SESSION

*TRANSCRIPT OF EVIDENTIARY HEARING  
DAY 3  
BEFORE THE HONORABLE JAMES ROBERTSON  
UNITED STATES DISTRICT JUDGE*

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## C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DON PALLAIS				
By Mr. Smith	386	--	448	--
By Mr. Siemietkowski	--	430	--	--
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## E X H I B I T S

NUMBERADMITTED

(No Exhibits Moved into Evidence.)

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**P R O C E E D I N G S**

COURTROOM DEPUTY: Civil Action 96-1285, Elouise Cobell  
et al. versus Dirk Kempthorne, et al.

THE COURT: All right. Let's see. Who's going to call  
the next witness? Mr. Smith?

MR. SMITH: Yes, Your Honor.

THE COURT: All right.

MR. SMITH: Good afternoon.

THE COURT: Good afternoon.

MR. SMITH: Your Honor, our next witness is Mr. Don  
Pallais.

(Oath administered by Courtroom Deputy.)

MR. SMITH: Your Honor, you had previously heard from  
Mr. Pallais at the October trial. Just briefly, he is a  
licensed CPA. If we could have Exhibit 60, please, and the  
Exhibit 60 is a copy of his CV.

He has approximately 30 years of experience as a CPA,  
he worked on the audit staff of Coopers & Lybrand, he was a  
comptroller in the private industry, he also worked on the staff  
of the American Institute of Certified Public Accountants, and  
including serving on the Auditing Standards Board.

Mr. Pallais will testify about, number one, historical  
problems affecting disbursements from IIM accounts, including  
money going out without authority, money going to the wrong  
people, improper transfers of IIM money, theft of IIM funds, and

1 general category of money being caught up in the system and not  
2 being disbursed.

3 And secondly he will testify about how these problems  
4 affect the government's figures regarding disbursements, and  
5 particularly those figures in AR-171.

6 Your Honor, he has previously been tendered as an  
7 expert in accounting and accounting principles and procedures.  
8 We would tender him for that purpose as well, and I understand  
9 the government has no objection to that.

10 MR. SIEMIETKOWSKI: That's correct, Your Honor.

11 THE COURT: Well, he was considered qualified at the  
12 last trial. He still is, unless he's lost a step or two, so he  
13 can testify. Go ahead.

14 MR. SMITH: Thank you, Your Honor.

15 **(DON PALLAIS, PLAINTIFF witness, having been duly sworn,**  
16 **testified as follows:)**

17 **DIRECT EXAMINATION**

18 BY MR. SMITH:

19 Q. Mr. Pallais, would you describe what you have done, the  
20 scope of your inquiry in preparation for your testimony today?

21 A. Certainly. You want me to include what I did in October,  
22 which set the stage for this?

23 Q. That would be fine.

24 A. Well, starting with the October trial, I reviewed the  
25 government's historical accounting plan, their accounting

1 manual, I looked at a number of reports by independent auditors  
2 and government auditors that critiqued the IIM accounting and  
3 control systems, I reviewed some expert reports for the purpose  
4 of determining whether the systems used in the IIM system were  
5 generally reliable.

6           Since the October trial, I read the Judge's findings in  
7 the October trial, I've read the filings in this matter, I read  
8 transcripts of hearings and some of the trial testimony here.  
9 I've also looked at a document called historical compilation of  
10 disbursement issues, or something very similar to that, and  
11 looked at a database of reports which was very similar to the  
12 one I looked at in October.

13 Q. Back in October, had you been provided with several disks  
14 which have been referred to as the meta-analysis documents?

15 A. Yes.

16 Q. And generally what did those documents comprise of?

17 A. The disks comprised a slew of reports. The ones I was  
18 interested in were the ones that NORC had characterized as  
19 audits, and that constituted about 300 reports.

20           So I read those 300 reports. There was more in the  
21 database but they weren't relevant for my purposes.

22 Q. Okay. The audits that you reviewed, would you characterize  
23 those as principally internal or external audits?

24 A. I think you would characterize most of them as internal  
25 audits. There were only a handful done by independent auditors.

1 Q. And when we're talking about internal audits, what are we  
2 talking about?

3 A. I think what we mean -- I think what you meant when you said  
4 it was audits done by government auditors, either the GAO or the  
5 Office of the Inspector General, as opposed to a CPA firm.

6 Q. And were these audits of all of Interior's Trust operations  
7 or were they more regional or local in scope?

8 A. There seemed to be a wide range. There were local office  
9 audits and there were audits that affected the trust fund  
10 overall. There were audits in different parts of the country.  
11 There was a fairly wide range.

12 Q. So it's fair to say that a lot of the documents you reviewed  
13 in preparation for your testimony today you reviewed back in  
14 October as well?

15 A. That's correct. Yes.

16 Q. And to refresh everyone's recollection, what was the scope  
17 of your testimony back in October? What were you asked to talk  
18 about?

19 A. What I was asked to talk about was whether the government's  
20 historical accounting plan could be depended on to achieve the  
21 objectives of the plan, which would be a complete and accurate  
22 accounting of the transaction histories for the individual  
23 Indian accounts. And my conclusion was that based on decades of  
24 experience and reports of auditors, it appeared that the system  
25 was too unreliable to be used as a basis that way.

1           The plan intended to largely use internal documents,  
2 and the history of the IIM Trust was that internal documents  
3 were notoriously unreliable.

4 Q. Okay. Now, what have you been asked to look at today?

5 A. What I was asked to do for this trial was a similar  
6 exercise, except I was specifically asked to look at controls  
7 and observations regarding disbursements over the decades.

8 Q. Okay. And based on your examination of those audits, what  
9 conclusions have you reached?

10 A. My conclusions are that you cannot depend on disbursement  
11 numbers to represent valid disbursements to individual Indians.

12           So to the extent that the disbursements are intended to  
13 portray disbursements to IIM account holders, the system is not  
14 good enough, not dependable enough that you can be sure that  
15 those disbursements represent valid payments to the appropriate  
16 recipients.

17 Q. Okay. Have you had an opportunity to look at AR-171, which  
18 was part of the administrative record from the October trial?

19 A. Yes.

20           MR. SMITH: If we could have a copy of that, please.

21 BY MR. SMITH:

22 Q. On the screen is a document. Is that what you understand to  
23 be AR-171?

24 A. Yes.

25 Q. And looking at that document, there's an evident disparity

1 between collections and disbursements. Is that correct?

2 A. Yes, there is.

3 Q. And what is that approximate disparity?

4 A. As near as I can recall, it was about three and a half  
5 billion dollars. Collections were three and a half billion  
6 dollars more than disbursements.

7 Q. If you look at Column G, is that the disbursement column?

8 A. Yes.

9 Q. And is there any information prior to 1972 on disbursements?

10 A. There's none listed, no.

11 Q. Okay. Have you had an opportunity to compare that to a  
12 revised AR-171 provided by the government?

13 A. Yes.

14 MR. SMITH: If we could see that document, please. The  
15 first one, yeah.

16 BY MR. SMITH:

17 Q. Is this a copy of the document you've reviewed?

18 A. This is one of the them. This appears to be the May 30th  
19 version.

20 Q. So you've seen two different revised AR-171s?

21 A. Yes.

22 Q. And when did you first see the Revision 1?

23 A. Must have been about a week ago.

24 Q. And Revision 2?

25 A. I want to say over the weekend maybe.

1 Q. And in revised AR-171, disbursements is now reflected in  
2 Column H. Is that correct?

3 A. That's correct.

4 Q. And does it appear at this point that within the past week  
5 or two, pre-1972 disbursements have been filled in with some  
6 numbers?

7 A. On this version there are now pre-1972 disbursements.

8 Q. Okay. If you could -- on Column H there's a reference to  
9 footnote five, and I believe that's on the second page. If we  
10 could look at that, please. If we could focus in on five.

11 And what does footnote five indicate Column H  
12 represents?

13 A. Column H represents all outflows from the IIM system.

14 Q. Okay. And includes, it says Tribal Trust checks and  
15 electronic funds transfers?

16 A. Correct.

17 Q. In your review of documents, did you encounter any documents  
18 related to electronic fund transfers?

19 A. I don't recall any.

20 Q. Did you as far as checks and Tribal Trust transfers?

21 A. Yes, there were lots of documents that referred to checks  
22 and transfers.

23 Q. And if we could look on the next page. And focus in on item

24 H. And does it appear that the data from 1887 through 1971 came  
25 from something called a NORC disbursement estimate?

1 A. Yes, that's what it says.

2 Q. And at this point, have you been provided any data regarding  
3 that estimate?

4 A. No.

5 Q. Okay. Mr. Pallais, based on the review that you have  
6 performed of the audit data over the past 100 years of this  
7 Trust, what if any opinions have you developed regarding the  
8 ability to determine the propriety of disbursements from the  
9 IIM Trust?

10 A. Well, as I mentioned, to the extent that disbursements are  
11 supposed to represent valid payments to IIM beneficiaries, the  
12 controls and accounting procedures that the IIM used over the  
13 decades was sufficiently unreliable that you can't depend on  
14 that number being a valid representation of the amounts that  
15 actually went to the correct IIM beneficiaries.

16 Q. And what's the basis for that?

17 A. Looking at 100 to 150 reports over almost 100 years of  
18 history.

19 Q. And what are the types of problems that you encountered that  
20 led you to that conclusion?

21 A. There are a number of problems. There are lack of  
22 authorization for payments, there are recorded instances of  
23 payments not going to the right people, there have been  
24 instances of fraud, there are a lot of internal control  
25 weaknesses, lack of segregation of duties, lack of control over

1 the checking account or the checks, there are lack of  
2 reconciliations, there are a number of problems that occurred  
3 with some frequency for years and years and years.

4 Q. That was my next question. Would you characterize these  
5 problems as sporadic or of a more pervasive nature?

6 A. They appear to be fairly pervasive. You see the same  
7 observations, comments, and criticisms decade after decade.

8 MR. SMITH: If we could see Exhibit 65, please.

9 BY MR. SMITH:

10 Q. And can you describe for the Court what Exhibit 65 is?

11 A. This is a document that summarizes observations made in  
12 roughly 100 to 150 reports, starting from 1905 and goes all the  
13 way through 2006 or so. These represent quotes or descriptions  
14 of criticisms of internal control regarding disbursements taken  
15 from reports that presumably were in the NORC database.

16 Q. Okay. And you have a listing of a year and then a quote or  
17 a summary under there. And then can you actually link to the  
18 document itself that has that summary?

19 THE COURT: I think you neglected to ask the witness  
20 who prepared this.

21 MR. SMITH: Okay.

22 BY MR. SMITH:

23 Q. Can you describe for me who prepared this document?

24 A. I'm not sure who prepared it.

25 Q. Okay.

1 THE COURT: Oh.

2 BY MR. SMITH:

3 Q. Have you reviewed this document?

4 THE COURT: I thought he was going to say that he  
5 prepared it. So it's just a document?

6 MR. SMITH: It is a document, Your Honor.

7 BY MR. SMITH:

8 Q. Have you reviewed this document?

9 A. I have reviewed the document. I've looked at all of the  
10 reports that are referenced, and from what I can tell, the  
11 quotes and descriptions are a fair representation of what is  
12 actually in the report.

13 Q. And are the quotes consistent with the documents that you've  
14 reviewed back in October?

15 A. Yes.

16 Q. And do they fairly reflect your opinions regarding the  
17 disbursement issues since 1905 through 2006?

18 A. They fairly reflect the opinions of the people who wrote the  
19 reports, I presume.

20 Q. Okay. They fairly reflect the problems that were  
21 encountered over the 100 years of the Trust?

22 A. Yeah, this document fairly reflects what the reports written  
23 by auditors say.

24 Q. And you indicated the source for the majority of the  
25 documents are meta-analysis documents from NORC?

1 A. That's correct.

2 Q. Now, in some years there's nothing listed. Is that fair?

3 A. That's true.

4 Q. Were there some years where you had no audit reports at all?

5 A. There were no audit reports in the NORC meta-analysis.

6 That's correct.

7 Q. When performing an audit, what if any importance do you  
8 place on identifying internal controls?

9 A. Internal controls is typically an important feature of an  
10 audit. Now, there are two kinds of audits we need to keep in  
11 mind here, because there are two kinds of audits being done on  
12 the IIM Trusts.

13 There are independent audits, what we call GAAS audits,  
14 Generally Accepted Auditing Standards, and these are done by  
15 independent auditors, CPA firms. And the purpose of the GAAS  
16 audit is to render an opinion on whether the financial  
17 statements fairly present financial position or results of  
18 operations in conformity with generally accepted accounting  
19 principles.

20 When we do an independent audit, the auditor is  
21 required to understand internal control as part of doing that  
22 audit. The auditor has to understand enough about internal  
23 control, that is the accounting processing and the disciplines  
24 over the accounting system, to understand what kinds of things  
25 could go wrong, what kinds of things could be misstated in the

1 financial statements.

2 He also has to understand internal controls in  
3 sufficient detail to figure out where are the areas of increased  
4 risk, where are errors or misstatements more likely to occur,  
5 because what the auditor wants to do is focus on the areas where  
6 the misstatements are more likely to occur.

7 The auditor also has to understand internal control  
8 enough so that he can design the actual tests he's going to  
9 apply. You can't test documents unless you know what they  
10 represent and where they came from.

11 If controls are effective, if they're really good, the  
12 auditor can test their effectiveness and rely on the company's  
13 controls to reduce the amount of testing he does. On the other  
14 hand, if the controls are not that effective, the auditor can't  
15 rely on them, the auditor can still complete the audit, though.  
16 Generally we can audit around problems in the internal controls  
17 by merely doing more or better kinds of tests.

18 In really egregious cases the controls are so bad that  
19 the auditor actually can't do an audit and can't render an  
20 opinion.

21 Q. Now -- I'm sorry, go ahead.

22 A. The other kind of audit is an internal audit, or what we  
23 might call an operational or performance audit. Now, the amount  
24 of work you do on internal controls on one of those is entirely  
25 dependent on what your goal is in the audit. Often it's the

1 case that the whole point of the audit is to look at some aspect  
2 of control. You might not be looking at the entire control  
3 structure, but you want to see some aspect of control and see if  
4 it's working efficiently and effectively. And in that case  
5 internal control is obviously of paramount importance, because  
6 that's what you're doing.

7           You might also do an internal audit that has absolutely  
8 nothing to do with controls, and in that case you wouldn't look  
9 at internal control at all and you very well probably would not  
10 have any observations regarding internal control, because that's  
11 not what the auditor was intending to look at.

12 Q. And when auditing something like the IIM Trust, what kinds  
13 of internal controls would you expect to exist?

14 A. If you're looking at the IIM Trust, the kinds of controls  
15 you would expect to exist if this were well functioning are ones  
16 that ensure that -- and we're talking about now disbursements, I  
17 presume, controls over disbursements?

18 Q. That's correct.

19 A. We would expect to see controls that make sure the  
20 disbursements are only paid to the right people in the right  
21 amounts, and that the system captures all of the disbursements  
22 made.

23           So you would expect to see a lot of controls. And  
24 although this isn't a comprehensive list, the kinds of controls  
25 you would expect to see would be things like disbursements are

1 only made if they're authorized, so disbursements should only be  
2 made if the beneficiary has specifically requested the  
3 disbursement be made to him. And you would expect to see some  
4 documentation of that.

5 You would also expect to see that somebody at the Trust  
6 ensured that the payments were only being made based on the  
7 right documentation, a signed request by the beneficiary, and so  
8 you would expect that that person would authorize the actual  
9 payment.

10 You would expect controls to make sure that the records  
11 are internally consistent and have integrity. So, for example,  
12 you would want to make sure that the controlled account that  
13 shows the amount owed to all of the beneficiaries agrees to the  
14 total of the detail, the total of the individual accounts. So  
15 this way you know that if a disbursement has been made, it has  
16 been allocated to a particular account. You don't have  
17 disbursements made that haven't been allocated to anybody.

18 You would expect to see that the cash account in the  
19 general ledger agrees to the cash reflected at the bank, or in  
20 this case the Treasury Department, to make sure that all of the  
21 disbursements that you have made have actually been recorded.

22 And you would expect a third kind of discipline over  
23 this, which is to say you would expect statements to be sent to  
24 the account holders so that if there's a problem in the  
25 individual account, they would complain and bring it to your

1 attention.

2           So you would know, as a result of those three, that all  
3 disbursements have been recorded in individual accounts, you've  
4 accounted for all disbursements, and the allocation to the  
5 individual accounts are correct because the individual Indians  
6 would have complained if they were charged for a withdrawal they  
7 didn't make.

8           You would also expect to see segregation of duties.  
9 What this means is you would have internal checks, one employee  
10 checking the work of another. If you have one person doing  
11 everything, for example, it would be very hard to catch a  
12 mistake, whether it be unintentional or intentional. So you  
13 don't want one person writing the checks and accounting for the  
14 checks and doing all those other things.

15           You would also expect to see controls over the writing  
16 of checks, that only certain people are allowed to sign checks,  
17 certain people are allowed to approve them, that there's  
18 controls to make sure other people can't write unauthorized  
19 checks.

20           And you would expect to see something where there's  
21 monitoring of accounts where mistakes could happen. For  
22 example, when there are negative balance accounts, you would  
23 want somebody looking at negative balance accounts to say, how  
24 did that get overdrawn, what's the mistake and how do we fix it.  
25 Or if there are dormant accounts, for example, dormant accounts

1 are a great place to look if you wanted to misappropriate funds,  
2 because there isn't a beneficiary who is on top of it, since  
3 it's dormant. So you would want regular reviews of dormant  
4 accounts to see if there's any unexpected activity.

5 So those are the kinds of controls you would expect to  
6 see. Obviously there are a lot more specific controls, but  
7 that's just kind of a summary.

8 Q. When you're talking about statements, are you talking about  
9 statements that would be clear and understandable to a  
10 beneficiary?

11 A. Yeah, I would presume they would not be useful if they  
12 weren't clear and understandable.

13 Q. The types of internal controls that you've identified, were  
14 those present based on the audits you reviewed in the IIM Trust?

15 A. There were deficiencies probably in every one of those areas  
16 that were referred to in reports over the decades covered in the  
17 NORC database.

18 MR. SMITH: If we could look at Exhibit 61.

19 BY MR. SMITH:

20 Q. And is this a summary of some of the major disbursement  
21 problems that you identified?

22 A. Yes.

23 Q. Lack of authorization or support for disbursements, absence  
24 of reconciliations, lack of segregation of duties, absence of  
25 statements, absence of thumbprints or other identifications,

1 problems with supervisory accounts, dormant accounts, negative  
2 balance accounts, lack of addresses, failure to safeguard  
3 checks, general findings of lack of controls, and then last one,  
4 improper distributions and theft. Is that correct?

5 A. Correct.

6 Q. I want to briefly go through some of those items and show  
7 you a few examples.

8 Let's focus on the first one, lack of authorization or  
9 support for disbursements. What are you talking about?

10 A. Well, as I mentioned, controls you would expect to see  
11 include the fact that disbursements are only made when requested  
12 by the account holder, so you don't want money being spent out  
13 of somebody's account if they didn't ask for it to be done, or  
14 if somebody who is unauthorized to ask for it asks for it to be  
15 done.

16 You also want controls at the Trust itself to make sure  
17 that funds are only being expended based on those requests.

18 MR. SMITH: If we could look back to Exhibit 65,  
19 please, and go to item 41, 1954.

20 BY MR. SMITH:

21 Q. And if we could hyperlink on that and if you could tell us  
22 what this document is.

23 A. This appears to be a report on an audit at Anadarko done by  
24 the Department of Interior in 1954.

25 Q. And is this one of the documents you reviewed in preparation

1 for your testimony today?

2 A. Yes.

3 Q. And if we could go back to the actual hyperlink page. If  
4 you could focus in on the first paragraph under 13.

5 A. Uh-huh.

6 Q. Can you describe for the Court what the problem is with  
7 respect to authorization for disbursements?

8 A. Well, it shows that nearly three quarters of the  
9 disbursements were not supported by the proper authorization,  
10 and of the ones that were supported, half didn't have the  
11 document the Department of Interior required.

12 Where they were on file, almost one out of five were  
13 not filled in completely, and more than a quarter were approved  
14 by somebody who also prepares and issues the checks. So  
15 somebody was preparing, approving, and doing the check, which is  
16 a segregation of duties problem.

17 Q. This example, is it an isolated example?

18 A. No. There were examples of unauthorized payments throughout  
19 the database through most of the decades.

20 Q. Okay. Would the problems with the lack of authorization  
21 include authorizations signed by someone other than the  
22 beneficiary?

23 A. Yeah, there would be requests by people other than the  
24 beneficiary.

25 Q. What about transfers of funds? What kinds of problems did

1 you identify with respect to transfers of funds?

2 A. Well, some of the problems that were identified include  
3 transfers to government agencies without what the auditor  
4 considered to be appropriate support.

5 Q. How about transfers to third parties or Indian tribes?

6 A. Right. Well, I guess when I said government agencies, what  
7 I intended to include was Indian tribes, other people. And  
8 there would also be checks made out to third parties who did not  
9 appear to be authorized recipients.

10 Q. And again, were these problems isolated or fairly common?

11 A. They occurred across the database.

12 Q. You were looking at the government's disbursement numbers.

13 Why is this important?

14 A. Well, to the extent that we are assuming that the  
15 disbursements represent valid disbursements to individual  
16 Indians, this calls that assumption into question because we're  
17 being told that there are checks being written that people  
18 didn't ask for.

19 Q. Now, just because a distribution may not be authorized, or  
20 there may not be any documentation of the authority doesn't mean  
21 it was not actually received by the correct beneficiary. Is  
22 that correct?

23 A. That's correct.

24 Q. What if anything did you see in your examination of records  
25 that supported your concerns that money was in fact not being

1 received by beneficiaries?

2 A. Well, there were a number of situations where the auditor  
3 contacted beneficiaries directly, and the beneficiaries reported  
4 that the amounts shown as disbursed to them were not received by  
5 them.

6 Q. What is a confirmation or a negative confirmation in  
7 accounting terms?

8 A. Well, confirmation is a type of audit test we do. It's one  
9 of the strongest kinds of tests we have. In a confirmation, we  
10 typically go outside of the audited entity to ask some  
11 independent third party to provide evidence about amounts  
12 recorded in the financial statements.

13 Typically we see this in accounts receivable in a  
14 typical commercial entity. The commercial entity will say, this  
15 customer owes us \$10,000, and the auditor will send a letter  
16 directly to the customer saying, do you owe the client \$10,000,  
17 please tell us. And the response will come directly back to the  
18 auditor. This is very strong audit evidence.

19 Confirmations in general fall into two kinds. We have  
20 what we call positive confirmations, in which case we send out  
21 the request and we ask the person on the other end, please tell  
22 us specifically, do you agree with this number; if yes, tell us  
23 yes, if no, tell us why you disagree. If it's a positive  
24 confirmation, we expect a response back in either case.

25 Negative confirmation, we send out a letter that says,

1 please contact us if you disagree. You don't need to do  
2 anything if you agree, but if you disagree, please tell us.

3 Q. In a typical situation where you would send out a  
4 confirmation or a negative confirmation, based on your  
5 experience, what would be the response?

6 A. Positive confirmations vary all over the lot, depending on  
7 the client base, the industry, and that sort of thing. Negative  
8 confirmations, there's no predictability at all, and in fact,  
9 when I was on the Auditing Standards Board, we issued Statement  
10 on Auditing Standards Number 67, which essentially says you  
11 can't use negative confirmations for audit evidence. It doesn't  
12 say absolutely, but it says most of the time you can't, except  
13 in some very specific situations.

14 And the reason for that is, it doesn't provide you a  
15 basis to draw a lot of conclusions. If you don't get any  
16 responses back on negative confirmations, you don't know whether  
17 everybody agrees. People might not agree but they didn't bother  
18 to read the confirmation, they just threw it away. The  
19 confirmation was sent to the wrong address and the intended  
20 recipient never got it. So the fact that you don't get a  
21 response back doesn't give you much in the way of audit  
22 evidence.

23 On the other hand, when you do get them back, it tells  
24 you that you might have a problem.

25 Q. The auditing standard you mentioned, was that subsequent to

1 1990?

2 A. That was issued around 1990 or 1991. I think it was 1990,  
3 sometime in that range.

4 Q. Okay, good. In the examples that you saw in the audits that  
5 you reviewed, were they significant or no?

6 A. The responses were significant. A very large contingent of  
7 people wrote back to the auditors saying that the statements  
8 they received were not correct, and a large number said that  
9 they did not receive the disbursements reflected in the  
10 statements.

11 Q. We'll see an example of one. If we could look at 1986,  
12 number 261. And if we could go to the first page of that  
13 document.

14 And can you tell us what document this is?

15 A. This is an audit report by the Department of Interior's  
16 Office of Inspector General. So this was not done by an  
17 independent CPA firm, this was done by government auditors.

18 Q. And does it look like it's March 1986?

19 A. It looks like 1986.

20 MR. SMITH: If we could go back to the original page.

21 BY MR. SMITH:

22 Q. And can you describe what is happening here?

23 A. Yes, although if you could scroll up just a little bit, that  
24 would be good. Stop.

25 What they did was they selected 1410 disbursements

1 posted on ledger cards and they sent confirmations to the  
2 account holders. And these went out, and what they got back  
3 was, of the 1410, 103 responded that they had not received the  
4 IIM checks reflected on the statements, and that totaled  
5 \$328,000.

6 Q. And it looked like they had about 850 of them returned?

7 A. There were 850 returned for one reason or another, yes.

8 Q. What if any significance is that in terms of an auditor?

9 A. Well, the 103, you have 103 in disagreement based on a  
10 sample of 1410. I haven't done the math, but that's got to be  
11 an 8 percent problem rate. That's a very high rate. That's an  
12 unusually high rate of problems.

13 Q. And 15 to 16 percent of those that actually returned the  
14 confirmation?

15 A. Uh-huh.

16 Q. There were subsequent negative confirmations by Arthur  
17 Andersen. Is that correct?

18 A. That's correct.

19 Q. And the Court has already heard testimony about those, so I  
20 won't belabor those, but can you just generally describe your  
21 reaction to the negative confirmations delivered by Arthur -- or  
22 received by Arthur Andersen?

23 A. Well, Andersen did negative confirmations not as an evidence  
24 gathering tool but to look at this issue. And their results  
25 were very similar to the OIG results. They got a lot of people

1 writing back, unusually high number of people writing back to  
2 say, we never got these disbursements, we never got these  
3 checks.

4 Q. In fact, in the case of Arthur Andersen, it would be close  
5 to over 30 percent?

6 MR. SIEMIETKOWSKI: Objection, Your Honor, leading the  
7 witness.

8 THE COURT: Sustained.

9 MR. SMITH: If we could look at 1988, number 267.

10 THE COURT: Before you do 1988, number 267, go back to  
11 that 261, that part that you showed. There's something just  
12 underneath the quoted part that said we're going to compare the  
13 missing checks to the responses we got. Let me read the rest of  
14 that paragraph and then tell me if you know, if either  
15 Mr. Pallais, or for that matter Mr. Smith knows, whether that  
16 was ever done and whether we have any evidence of the result.

17 MR. SMITH: Your Honor, I can tell you in the documents  
18 that we've received, we have not seen any response -- seen that  
19 that was ever done.

20 THE COURT: Any follow-up on that.

21 MR. SMITH: That's correct.

22 THE COURT: Do you know of any, Mr. Pallais?

23 THE WITNESS: No, sir.

24 MR. SMITH: Thank you.

25 If we could look at 1988, number 267.

1 BY MR. SMITH:

2 Q. And does that refresh your recollection as to the response  
3 received by Arthur Andersen?

4 A. Well, it says they got 1249 responses, and of the 12 --  
5 well, it doesn't say what the sample size was, it tells you that  
6 30 percent of the responses talked about not receiving the  
7 payments. So that would be roughly 400 people said they didn't  
8 get payments.

9 MR. SIEMIETKOWSKI: Objection, Your Honor. The  
10 documents in the pleading attached to the May 30th response to  
11 our motion in limine speak for themselves. While we may not  
12 object to Mr. Pallais analyzing the results as an accountant, we  
13 do object to him actually just reading from the screen.

14 THE COURT: All right. Well, I'm going to overrule  
15 that because he's reading at the same time I'm reading, so I  
16 don't attach any particular significance to the fact that he's  
17 reading it.

18 BY MR. SMITH:

19 Q. Does the Arthur Andersen result confirm your concerns  
20 regarding failure to receive funds by beneficiaries?

21 A. Yes, it's clearly a concern. Andersen found it, the  
22 Department of Interior found it, so it's clearly a concern.

23 Q. The second item on your list was absence of reconciliations,  
24 and the Court has already heard a lot about reconciliations so I  
25 don't want to again belabor that point. But when you're talking

1 about absence of reconciliations, what are you talking about?

2 A. There are two things that need to be reconciled here. One  
3 is that the total of all of the individual Indian accounts  
4 should agree with or at least reconcile to the general ledger  
5 control total, so you know that everything has been accounted  
6 for.

7 The other reconciliation that you need to be concerned  
8 with is the cash shown by the IIM Trust agrees with essentially  
9 what his bank says, in this case the Treasury Department, so you  
10 know that all of the cash transactions have been appropriately  
11 accounted for. Or I think appropriately included.

12 Q. Let's talk about the first one, subsidiary to the general  
13 ledger. Why is that important when you're talking about  
14 accuracy of disbursement data?

15 A. Well, if we are saying that disbursements were made to  
16 individual Indian beneficiaries, then each of those  
17 disbursements should be reflected in the IIM account. And if  
18 the total of the IIM account doesn't agree with the control  
19 total, you've got an issue, you've got either something that was  
20 paid and not recorded or something that was recorded but not  
21 paid, or something that was paid to somebody other than the IIM  
22 beneficiary.

23 And unless you can reconcile those two numbers, you're  
24 not sure what the right number to use for disbursements is.

25 Q. Okay. If you don't reconcile the subsidiary and general

1 ledger promptly, what happens?

2 A. Well, if you're extraordinarily lucky, if you have a  
3 problem, it fixes itself the next month, if you're  
4 extraordinarily lucky.

5           If the problem with reconciliation is a systemic  
6 problem, then over time it just gets worse. More and more  
7 errors get made, and the difference between the total of the  
8 individuals and the control total can get bigger or it can get  
9 smaller, but if it gets smaller, that doesn't mean necessarily  
10 the situation is getting better, it just means you -- it might  
11 just mean you've got new errors going in a different direction  
12 than the original errors were.

13           But generally, over time, if it's a systemic error, it  
14 just gets harder and harder to reconcile.

15 Q. In what you've reviewed, is it an isolated problem or a  
16 systemic error?

17 A. It appears to be a systemic error because it occurs over  
18 decades.

19 Q. This Court has already seen disparities between the  
20 subsidiary and general ledger in, let's call it the modern era,  
21 subsequent to 1980. Were there problems like that back in  
22 earlier years?

23 A. Absolutely.

24 Q. And when the problems were identified, were they corrected?

25 A. Typically there's no indication that they've been corrected.

1 I recall one instance where somebody forced an adjustment on the  
2 control account to get it to agree to the total of the  
3 individual accounts, but that doesn't necessarily mean they  
4 corrected the error, that just meant they forced the two to  
5 agree.

6 Q. What do you mean, they forced the two to agree? What did  
7 they do?

8 A. Well, they looked at the difference between the control  
9 account and the total of the individual accounts, and they just  
10 adjusted the control account so that it agreed. They changed  
11 the number so it agreed with the total of the individual  
12 accounts.

13 Q. So there was no indication whether the agreement was proper  
14 or not?

15 A. That's correct. It presumed that the individuals were right  
16 and the control account was wrong. But from my reading of the  
17 report, they really had no evidence that that was the case.

18 Q. Let's talk generally about Treasury. You've mentioned that  
19 and the Court has seen imbalances between Treasury and the  
20 general ledger. How does that affect your concern about  
21 disbursements?

22 A. Well, again, if you can't reconcile your bank account, if at  
23 the end of the month I can't reconcile my personal bank account  
24 to what the bank shows, I don't have any confidence that my  
25 checkbook is right.

1           And if I'm reporting to people based on the results in  
2 my checkbook, they've got no reason to believe that my  
3 disbursements are right.

4 Q. Okay. The next item on your list was lack of segregation of  
5 duties. And what is the importance of that?

6 A. Well, segregation of duties is a basic control concept. One  
7 aspect, the most obvious is you want people checking each  
8 other's work. But you also don't want somebody to have what's  
9 called incompatible duties, so you don't want, for example, the  
10 same person to approve the checks, write the checks, and do the  
11 accounting for the checks. Because if the person makes a  
12 mistake, nobody will ever notice it because they're the ones  
13 that do the follow-up.

14           If they want to misappropriate funds, that's the  
15 position to do it in because you approve it, pay it to yourself,  
16 and then bury it in the accounting records.

17           So in a good control structure, you want segregation of  
18 duties to separate those functions, so if somebody does  
19 something wrong, somebody else can catch it.

20           MR. SMITH: Let's look at 1953, number 35. If we can  
21 go to the document itself, the first page.

22 BY MR. SMITH:

23 Q. And can you describe for the Court what this document is?

24 A. This is a report done by the Bureau of Indian Affairs,  
25 June 1953. It's apparently a GAO document.

1 Q. And is this one of the documents that you reviewed in  
2 preparation for your testimony today?

3 A. Yes.

4 MR. SMITH: And if we could go to the actual hyperlink  
5 page. And if we could focus on the first full paragraph, under  
6 "inadequate internal control."

7 BY MR. SMITH:

8 Q. If you could read that, and it goes on to the next page?

9 A. In this case what it's saying is one person receives cash,  
10 prepares official receipts and schedules of collections. So  
11 they're receiving the cash, accounting for the cash. Enters the  
12 receipts in a cash receipt book, makes the deposit -- I can't  
13 make out the first word. Totals the cash receipts book, makes  
14 postings to the individual accounts.

15 So they're accounting for the cash coming in, taking it  
16 to the bank, and making the entries into the individual ledger  
17 cards for the individual Indian accounts; sends the statements,  
18 prepares the disbursements, and if statements come back, this  
19 person gets them.

20 So this one person takes care of all the receipts, does  
21 the disbursements, does the accounting for them, and is in  
22 charge of correspondence with the individual Indian  
23 beneficiaries. So if this person wanted to misappropriate  
24 funds, nobody would ever find it, unless they were particularly  
25 poor at what they did.

1 Q. And in this particular example, again, is it an isolated  
2 occurrence or is it fairly routine?

3 A. There are comments criticizing the lack of segregation of  
4 duties across the decades.

5 Q. And again, how does that impact your evaluation of the  
6 disbursements by the government?

7 A. Well, that tells you that if this situation exists, there is  
8 a substantial risk that the disbursements being reflected in  
9 individual Indian accounts actually didn't go to those people,  
10 they might have gone to the person who wrote the checks.

11 Q. The next item you mentioned was absence of statements, and  
12 you talked a little bit about the importance of statements. Let  
13 me show you an example.

14 MR. SMITH: If we could turn to 1954, number 48. If we  
15 could link on the document and show the first page.

16 BY MR. SMITH:

17 Q. And can you describe what this document is?

18 A. This appears to be a 1955 audit done by the GAO.

19 Q. And is this again one of the documents you reviewed in  
20 preparation for today?

21 A. Yes.

22 Q. And if we could go back to the link page and focus in on the  
23 first full paragraph.

24 A. What this is saying is that statements -- that procedures  
25 called for statements to be sent semiannually, but the Fort Peck

1 Agency was not doing that. People only got statements if they  
2 specifically asked for them. And the reason they didn't,  
3 according to this, is that when they did send statements out, so  
4 many people disagreed with them that they came in and filled the  
5 office.

6 Q. And again, we just looked at one example, but how common was  
7 this problem?

8 A. There are comments across the database indicating that  
9 statements weren't being sent.

10 Q. Next item, you had thumbprints or other identification. Can  
11 you describe for us what those concerns were?

12 A. Well, this is something that primarily affected earlier  
13 years, and apparently was not unusual for Indian beneficiaries  
14 not to be able to write. So to transact business, they provided  
15 a thumbprint rather than a signature, and to make sure that the  
16 appropriate person was receiving the cash, the policy was that  
17 people were supposed to witness the thumbprint to attest to the  
18 fact that this is the right person.

19 And there are comments in many years, many audits  
20 indicating that this witnessing was not going on.

21 Q. Next item, you have three entries, supervisory accounts,  
22 dormant accounts, and negative balance accounts. What are  
23 supervisory accounts?

24 A. Supervisory accounts are those accounts where the person who  
25 owns the account is not judged capable of taking care of their

1 own business. It might be a minor or it might be an  
2 incompetent. So somebody has control over the account for them.

3 Q. And what kinds of problems did you see with supervisory  
4 accounts?

5 A. For supervisory accounts, for minors, for example, you might  
6 see -- or they did see disbursements going out for things that  
7 were not apparently for the benefit of the minor, things like  
8 pawn tickets, purchases of vehicles. There were other problems  
9 with minor accounts in that once the minor had aged out, they  
10 did not inform them that the money was available to them.

11 Typically -- or not typically, but often the supervisor  
12 was somebody who worked for the Trust, so an employee actually  
13 had full authority over the beneficiary's account.

14 MR. SMITH: If we could look at 1986, number 259, and  
15 go to the first page of that document.

16 BY MR. SMITH:

17 Q. And can you identify for us what this document is?

18 A. This is an OIG audit report dated March 1986.

19 MR. SMITH: And if you could go back to the link page  
20 and link on it.

21 BY MR. SMITH:

22 Q. And if you could review that and tell generally what the  
23 problem is that the auditor identified.

24 A. Well, this is use of minors' funds for things that the  
25 auditor apparently did not think was clearly justified.

1 Parents' debts were being paid, pawn tickets, hospital bills.

2 Q. For the parents?

3 A. For the parents, yes. Purchase of furniture and appliances,  
4 \$10,000 from a nine-year-old was used for the down payment on a  
5 van.

6 THE COURT: Mr. Smith, is this particular example an  
7 example of a disbursement problem that falls under the  
8 restitution category or is this more of a management problem  
9 that might fall under damages?

10 MR. SMITH: Your Honor, I think this would fall under  
11 restitution.

12 THE COURT: The money was paid. Right?

13 MR. SMITH: We don't know if it was paid or not. It  
14 went out but we don't really know where it went, whether it went  
15 for the benefit of the supervisor or someone else.

16 THE COURT: Well, purchase furniture and appliances,  
17 parents have a down payment for a van. All right. Go on, go  
18 on. I'm not sure what portion of this this bears to the whole,  
19 but it strikes me as a slightly off-kilter example of what  
20 you're talking about.

21 MR. SMITH: I understand, Your Honor.

22 BY MR. SMITH:

23 Q. Let's go on and talk about dormant accounts. What is the  
24 concern with dormant accounts?

25 A. A dormant account, by definition, has very little activity,

1 so there is a question about whether anybody is monitoring the  
2 account. If the account is dormant, and there is no beneficiary  
3 who is aware that the money is owed, if I were going to  
4 misappropriate funds, that would be a place I would do it  
5 because the odds on somebody finding it are not really that  
6 good.

7 Q. And how many instances did you see of problems with dormant  
8 accounts?

9 A. There were several instances where there were criticisms of  
10 the review and accounting for dormant accounts.

11 Q. And if we could look at 1982, number 222. And if you could  
12 link on the first page and tell us what this is?

13 A. This is a report to Congress by the Comptroller General  
14 describing improvements needed in the BIA accounting system.

15 Q. And go back to the link page, and third full paragraph, if  
16 you could focus on that.

17 A. And in this case, what they're saying is, as I mentioned,  
18 dormant accounts need to be reviewed to see if there's any  
19 unusual activity, and the Comptroller General report says that  
20 they're not being periodically reviewed, making fraudulent use  
21 of the funds easier. And they point to at least one example  
22 where a Tribal employee was convicted of embezzling more than  
23 \$26,000 from a dormant account that belonged to an aged,  
24 incompetent adult.

25 Q. The next item was actually negative balances. What are we

1 talking about when we talk about negative balances?

2 A. Well, negative balances, they have paid out more than the  
3 account holder had in their account. That's obviously an issue,  
4 because presumably this person now owes the Trust some money.  
5 Whether it was ever paid is a question. As an auditor, you have  
6 to satisfy yourself that that debt was ultimately collectible,  
7 and I'm not sure that the auditors ever did that.

8 But if money is being paid inappropriately to somebody  
9 that is included in the disbursements, clearly that disbursement  
10 was not a valid one.

11 Q. How often did you see problems with negative balances?

12 A. There were several references to negative balances going  
13 back to the 1950s.

14 Q. And are we talking about small amounts of money or somewhat  
15 larger?

16 A. It varied. There were very small amounts and very large  
17 amounts.

18 Q. In millions?

19 A. Yes.

20 Q. And again, how does that affect your concerns about  
21 disbursements from the Trust?

22 A. Well, it tells you that the fact that a disbursement has  
23 been made doesn't mean it went to a valid recipient.

24 Q. How would negative balances affect those concerns where  
25 you're dealing with an account that might be commingled?

1 A. Well, to the extent that your total was correct, a  
2 negative -- if you've overpaid one person, you will by necessity  
3 have to have underpaid another person.

4 Q. Next item on your list was lack of addresses. And just  
5 describe generally for the Court what the concern was.

6 A. Well, the concern of the auditors was for large portions of  
7 some of the populations, the Trust did not have current  
8 addresses for the beneficiaries. So if a check was mailed to  
9 the beneficiary, the question arises, where did you mail it if  
10 you don't have a current address? If you sent a statement,  
11 where did you send the statement if you don't have a current  
12 address?

13 Q. And how common was this concern reflected by the auditors?

14 A. There were several reports that discussed this issue.

15 Q. And are we talking about just a handful of addresses or  
16 something more significant?

17 A. In some cases it was very significant.

18 Q. If we could look at 1956, number 105. And can you describe  
19 what this document is?

20 A. It's a 1956 audit report in the Aberdeen area, done by a  
21 government auditor, but I'm not sure which department it is from  
22 looking at this.

23 Q. And if you could link on to the -- under analysis, if you  
24 could focus in on that paragraph under there in the middle of  
25 the page.

1 A. Uh-huh.

2 Q. What was the problem with addresses there?

3 A. It said that of 581 accounts, 87 percent did not show the  
4 addresses of the account holders. Also had problems with dates  
5 of birth.

6 Q. Again, problems that were not isolated but were fairly  
7 routine?

8 A. Common, anyway.

9 Q. Next item was failure to safeguard checks. And Mr. Ziler  
10 testified a little bit about this, but could you describe what  
11 your concerns were?

12 A. Well, there are several reports that discuss the fact that  
13 the checks were out in the open, they weren't accounted for, the  
14 check writing machines were available to people who might not be  
15 authorized to use them, check signing plates were available. So  
16 it would be not difficult for an unauthorized person to write  
17 what appears to be a valid check.

18 Q. Okay. In your review, did you find instances of actual  
19 erroneous distributions or actual theft of IIM funds?

20 A. Yes, there were several reports that referred to identified  
21 theft and some erroneous distributions.

22 Q. And the Court has already seen the 1914 report that talked  
23 about that. Do you recall that one?

24 A. Yes.

25 MR. SMITH: If we could just look at some more recent

1 examples. 1974, item 210.

2 BY MR. SMITH:

3 Q. What is this document?

4 A. This is an audit done by the Bureau of Indian Affairs on the  
5 Crow Indian Agency in Montana in 1974.

6 Q. And if you could turn to the link page. And could you  
7 describe for the Court what this is?

8 A. What this is showing is a number of unauthorized checks  
9 written on that account totaling \$4,500.

10 Q. And if you go to the next page, they actually have some  
11 details on those particular checks. Is that correct?

12 A. Right.

13 MR. SMITH: And if we could go, I believe it's five  
14 pages after that, page nine of the document.

15 BY MR. SMITH:

16 Q. And can you describe for the Court what this is?

17 A. This is a summary of the forged disbursements, so first  
18 line, for example, on August 12th, there are 42 forged checks;  
19 on the 21st there were three batches of forged checks.

20 Q. If you could look at the comment on the bottom of the page,  
21 what does that indicate?

22 A. It says the administrative officer stated that the  
23 signature, apparently his signature on the check wasn't actually  
24 his.

25 Q. If we could look at another recent example, 1982, item

1 number 216. And if we could link on the first page.

2 And is this another GAO report?

3 A. Yes, it is.

4 Q. It's a document you identified?

5 A. It's a document I reviewed.

6 Q. A document you reviewed. I'm sorry.

7 MR. SMITH: If we could go back to the link page and  
8 focus in on the first paragraph.

9 BY MR. SMITH:

10 Q. Is there an indication there that money in fact was going to  
11 people who had no authority to receive it?

12 A. It shows that names of 173 individuals who received trust  
13 fund checks were not shown on the list of authorized trust fund  
14 recipients.

15 Q. Okay. Another example, 1990, number 293. And is this a  
16 1990 report from Arthur Andersen?

17 A. Yes, it is.

18 Q. And again, one of the documents you reviewed?

19 A. Yes.

20 Q. Does it indicate as well that there's evidence of money  
21 being misappropriated?

22 A. Yes.

23 MR. SMITH: If we could go to the link page and focus  
24 in on, I believe, the third paragraph.

25 BY MR. SMITH:

1 Q. And what does that reflect?

2 A. It says there have been instances of misappropriated funds  
3 due to inadequate safeguards over Treasury checks, and poor  
4 internal control over disbursement in general.

5 Q. And again, are these a handful of the items that you saw  
6 that reflected money going to the wrong people or being  
7 embezzled?

8 A. Correct.

9 Q. We've talked about your concerns about the disbursements.  
10 Let me change the focus a little bit. And in your review of  
11 these audits, did you identify instances where money was not  
12 disbursed?

13 A. Yes.

14 Q. For whatever reason?

15 A. Yes.

16 Q. And let's talk about some of the earlier years. Let's say  
17 pre-1930, what kinds of things did you identify?

18 A. Well, apparently there was a policy described in these  
19 reports in which the Trust simply did not pay money out to  
20 beneficiaries, or if they did, they paid very little, regardless  
21 of what the balance was in the account.

22 Q. And if you could, as an example, look at 1909, item number  
23 2.

24 MR. SMITH: 1909, I'm sorry.

25 BY MR. SMITH:

1 Q. And can you describe for the Court what this document is?

2 A. This is a report of the Department of Interior dated  
3 June 30th -- or for the fiscal year ended June 30, 1909.

4 MR. SMITH: And if you could go back to the linked page  
5 and focus in on the second paragraph.

6 BY MR. SMITH:

7 Q. And generally what does this describe?

8 A. What this describes is a procedure in which they were only  
9 paying \$10 monthly allowances to certain Indians, and the  
10 writer's belief that -- and the instructions were issued to  
11 discontinue even the \$10 payments.

12 Q. Except in certain circumstances?

13 A. Right.

14 Q. And was this typical of some of the reports you saw in  
15 earlier years?

16 A. Yes, there were several reports that talk about this sort of  
17 thing in the earlier years.

18 MR. SMITH: If we could look at 1915, item number 16.  
19 Go a little further.

20 BY MR. SMITH:

21 Q. Let's go ahead. Maybe we can figure out that one.

22 In some of the later years, did you find instances  
23 where money was supposed to be disbursed but it just for  
24 whatever reason was not?

25 A. Yeah, there were examples where balances had accumulated,

1 that there were problems distributing funds that had  
2 accumulated, there were problems with minors who had aged out  
3 and were unaware that funds were available to them.

4 Q. Let me give you an example. 1935, number 23. And what is  
5 this document? I believe it's dated November 28, 1935.

6 A. Yeah, it's a report on IIM funds at --

7 Q. Does it appear to be the Colville agency?

8 MR. SIEMIETKOWSKI: Objection, Your Honor, leading.

9 THE COURT: Well, I think that's foundational. He's  
10 trying to get him to read a fuzzy word at the top of the page.  
11 I think it says Colville.

12 BY MR. SMITH:

13 Q. Does it appear to be Colville?

14 A. It looks like Colville.

15 Q. If you could move to the actual linked page and focus in on  
16 the third full paragraph.

17 A. It's referring to an effort to exercise restraint in paying  
18 out funds to individual beneficiaries.

19 MR. SMITH: Let's look at item number 57, 1955.

20 THE COURT: After this one we're going to take a short  
21 break.

22 BY MR. SMITH:

23 Q. Could you describe what this document is?

24 A. This is a GAO report on audits at Anadarko, Oklahoma for the  
25 year ended June 30, 1955.

1 Q. Is this one of the documents you reviewed as well?

2 A. Yes.

3 Q. And under the first paragraph, what is indicated there?

4 A. They're looking at some of the accounts and they've found  
5 that 14 separate accounts totaling about \$5,000 were as much as  
6 eight years old.

7 Q. Okay.

8 MR. SMITH: Does Your Honor want to take a break?

9 THE COURT: Yeah, just a couple of observations on  
10 particularly the recent stuff you've been showing him,  
11 Mr. Smith. Reluctance in 1909 to pay \$10 to Indians because it  
12 might make them lazy, which I think is what that whole thing is  
13 all about.

14 MR. SMITH: That's the implication.

15 THE COURT: Or restraining themselves from making  
16 payments in later years doesn't mean -- doesn't affect the  
17 disbursement schedules. It may affect the policy by which the  
18 schedules are made, but I don't see how it impacts the  
19 legitimacy of the disbursement numbers.

20 And as to the many examples you've shown me of fraud,  
21 waste, and abuse, and all of the subcategories of it, that's  
22 kind of a double-edged sword, isn't it? I mean, if the money  
23 was paid out, how was it held for the benefit of the government?  
24 Think about that and let's talk about it later. We'll be in  
25 recess for 10 minutes.

1 (Recess taken at 3:17 p.m.)

2 THE COURT: Okay, Mr. Smith, proceed.

3 MR. SMITH: Your Honor, do you want me to respond to  
4 your questions or proceed with the examination?

5 THE COURT: No, let's proceed with the witness. We can  
6 talk about the question later. I just wanted to sort of throw a  
7 marker down and we'll talk about it later.

8 MR. SMITH: Okay. That's great.

9 BY MR. SMITH:

10 Q. Mr. Pallais, we've looked at a lot of examples, and is it  
11 fair to say you could point to other examples where money was  
12 not disbursed from the IIM Trust?

13 A. Yes.

14 Q. And that goes throughout the decades?

15 A. Yes.

16 Q. As an accountant, what kinds of issues does this raise with  
17 you?

18 A. Well, it raises questions about whether the money is going  
19 out, to who it's supposed to be going to. And if it's not going  
20 out, what's happening to it.

21 Q. In light of the pervasive problems that you saw over the  
22 hundreds of years of the Trust, what conclusions did you reach  
23 regarding the ability to rely on Interior's own distribution  
24 data?

25 A. I think you can't really rely on their distribution numbers

1 to represent valid payments to valid individual Indian  
2 beneficiaries.

3 Q. And were the problems that you noted, were they better  
4 pre-1972 or post-1972, or were they the same?

5 A. There were problems throughout. They were sometimes  
6 different problems, but there were problems throughout.

7 MR. SMITH: Your Honor, I have no further questions.

8 THE COURT: Cross-examine, Mr. Siemietkowski?

9 MR. SIEMIETKOWSKI: Good afternoon, Your Honor.

10 THE COURT: Good afternoon.

11 **CROSS-EXAMINATION**

12 BY MR. SIEMIETKOWSKI:

13 Q. Good afternoon, Mr. Pallais.

14 A. Good afternoon.

15 Q. You're an expert in accounting and accounting procedure and  
16 methods, are you not?

17 A. Yeah, I suppose. Yeah.

18 Q. You're not an expert in government records, are you?

19 A. No.

20 Q. You're not an expert in federal Indian relations, are you?

21 A. No, sir.

22 Q. You're not an expert in federal Indian records, are you?

23 A. No.

24 Q. You have not reviewed any of the actual government records  
25 underlying the IIM accounts, have you?

1 A. No.

2 Q. You just reviewed reports about those records, as you've  
3 discussed in your direct examination. Correct?

4 A. That's correct.

5 Q. So, for instance, you have not reviewed Treasury settlement  
6 packages?

7 A. That's correct.

8 Q. You have not reviewed GAO settlement packages?

9 A. Correct.

10 Q. You have not reviewed any statements of differences.  
11 Correct?

12 A. That's correct.

13 Q. Do you know what a statement of difference is?

14 A. I'm not sure I do. I'm going to say I don't, although I'm  
15 thinking there might have been an example in the October -- in  
16 some of the materials I looked at in October. But I'm not  
17 sufficiently confident to describe it.

18 Q. You have not reviewed any statements of accountability, have  
19 you?

20 A. Statements of accountability? You mean individual  
21 statements to Indians, or the IIM's accountability, the  
22 financial statements?

23 Q. Statements of accountability as prepared by BIA in the  
24 context of the IIM system. Have you seen any of those?

25 A. I don't believe I've seen what you're probably referring to.

1 I mean, the financial statements of the IIM would be a statement  
2 of accountability, but I don't think that's what you're talking  
3 about.

4 Q. You haven't reviewed any statements of funded checking  
5 accounts, have you?

6 A. No, sir.

7 Q. Do you know what those are?

8 A. Statements of funded checking accounts? I could surmise,  
9 but I haven't actually looked at one.

10 Q. You have not reviewed any Osage documents, have you,  
11 Mr. Pallais?

12 A. No, I have not.

13 Q. You have not reviewed any judgment and per capita documents,  
14 have you?

15 A. No.

16 Q. You have not reviewed any electronic fund transfers records,  
17 have you?

18 A. No.

19 Q. Beyond the reports which you testified about on direct  
20 examination, you have not actually looked at any receipts data,  
21 have you?

22 A. Not any original data. I clearly have seen AR-171, for  
23 example, and other things that have been introduced at trial,  
24 but I haven't seen any original detail data.

25 Q. Likewise, Mr. Pallais, you have not actually looked at any

1 original disbursement data, have you?

2 A. Not a lot. There have been copies of things in reports, but  
3 I have not seen any outside of reports.

4 Q. Now, regarding the reports, Mr. Pallais, which reports that  
5 you have reviewed provide evidence of what percentage of monies  
6 collected by the IIM system have been disbursed to  
7 beneficiaries?

8 A. I don't believe any of the reports describe that particular  
9 statistic.

10 Q. Similarly, which reports that you have reviewed provide  
11 evidence of what percentage of monies collected by the IIM  
12 system ought to have been disbursed to beneficiaries?

13 A. Again, I don't believe any of the reports say that. What  
14 the reports talk about is the lack of reliability of the  
15 recorded amounts, but they don't provide the statistic you are  
16 requesting.

17 Q. And can you point to any particular reports, Mr. Pallais,  
18 that you have reviewed that provide evidence of a benefit to the  
19 government conferred by the IIM?

20 A. No.

21 Q. Now looking at what I believe was PPX-61, your list of 10  
22 major disbursement problems, do you recall that No. 7 was "Lack  
23 of address of account holders"?

24 A. Yes.

25 Q. Are you familiar with Interior's efforts to find WAU?

1 A. No.

2 Q. Do you know what WAU refers to?

3 A. I could guess, but I don't --

4 Q. Do you know what it stands for?

5 A. I could guess what it stands for, but I don't know for sure  
6 that's what it stands for.

7 Q. I have another question, please --

8 MR. SIEMIETKOWSKI: Thank you, Antonio.

9 BY MR. SIEMIETKOWSKI:

10 Q. I have another question, please, about your direct  
11 examination. You talked about all the reports in this  
12 historical compilation being in the NORC database. And how do  
13 you know that those reports are in the NORC database?

14 A. I don't know. I have not spoken to NORC. I was given disks  
15 and informed of their provenance, but I have not actually spoken  
16 to NORC and I have not audited the database.

17 Q. And just to be clear, you did not actually prepare the  
18 73-page historical compilation from which you testified.  
19 Correct?

20 A. That's correct.

21 Q. Do you know who selected those particular reports, as  
22 opposed to selecting other reports?

23 A. No, I don't.

24 MR. SIEMIETKOWSKI: If I could please see page five of  
25 the historical compilation.

1 THE COURT: Who is showing page five? Catina? Okay,  
2 it's up.

3 MR. SIEMIETKOWSKI: Thank you for your indulgence, Your  
4 Honor.

5 BY MR. SIEMIETKOWSKI:

6 Q. Mr. Pallais, that refers to, you see those two bullets in  
7 the center of that page, 1928?

8 A. I see two bullets, yes. Do you want me to read them?

9 Q. No, no. You've read those two extracted quotations from the  
10 1928 letter from the comptroller general, have you not?

11 A. I believe so.

12 Q. Have you read the entire letter from the comptroller  
13 general?

14 A. I don't know if I read this entire letter or not. I read a  
15 number of entire reports, many, but I'm not sure.

16 Q. Well, let me then show you DX-467, and specifically page 104  
17 of the same comptroller general letter.

18 MR. SIEMIETKOWSKI: If we could please enlarge the  
19 highlighted portion for Mr. Pallais to read.

20 BY MR. SIEMIETKOWSKI:

21 Q. Could you please read the highlighted portion, Mr. Pallais?

22 A. To myself, or --

23 Q. Out loud, please.

24 A. "The check register was however carefully scrutinized, and  
25 all large payments and payments listed for the purposes that

1 were of an unusual nature were inquired into. The impression  
2 prevailed that, with few exceptions, the disbursements were on  
3 the whole reasonable, and as a rule made for the purposes  
4 beneficial to the Indian concerned."

5 Q. Thank you. Now, were you aware this quote existed in the  
6 same 1928 letter from which those two extractions in the  
7 historic compilation were found?

8 A. I might have been. I don't know. I just don't recall  
9 whether I read this entire report or not.

10 THE COURT: Let me see the quoted portions again.

11 MR. SIEMIETKOWSKI: From our DX, Your Honor?

12 THE COURT: From the compendium. No, I mean from  
13 the -- your point is that they were taken out of context. I  
14 want to see what the context is. 1928. Okay.

15 MR. SIEMIETKOWSKI: Now if the Court will indulge me, I  
16 would like to switch back to a plaintiffs' exhibit briefly one  
17 more time before switching back to defense exhibits. If it  
18 would possible to show, I believe it's number 23 in the  
19 Historical Compilation, the 1935 report which Mr. Pallais  
20 testified to. The 1935 report, number 23 in plaintiffs' Historic  
21 Compilation. And if it's possible to cursor down to the bottom  
22 of page three, I believe it is. Is it possible to cursor down a  
23 bit further, please? Is it possible to look at the next page,  
24 please? And a bit further, please, if possible.

25 My apologies to the Court, Your Honor. I cannot find

1 the quote I was looking for. And we will be using defense  
2 exhibits from now on.

3 BY MR. SIEMIETKOWSKI:

4 Q. Now, Mr. Pallais, you testified regarding several reports  
5 listed on pages 19 to 33 of your historical compilation. And  
6 those discuss BIA -- or those are quotes from BIA auditor  
7 reports between 1956 and 1966. Do you recall testifying about  
8 some of those BIA auditor reports during that time frame?

9 A. Yes.

10 Q. Now, you have not reviewed all of those auditor reports,  
11 have you?

12 A. If it was in the compilation, I have looked at every one of  
13 them. If they were in the database provided for the October  
14 trial, I read all of them.

15 So I think that answers your question.

16 Q. It does, thank you.

17 But you're not familiar, are you, with the BIA standard  
18 procedures associated with those audits?

19 A. No.

20 Q. Did you know that BIA's audit division visited these area  
21 offices annually?

22 A. No.

23 Q. Did you know, for instance, that auditors usually spent one  
24 to three weeks at an agency, reviewing IIM records?

25 A. No.

1 Q. Did you know that the auditors conducted an exit interview  
2 with the area officer at the conclusion of the visit?

3 A. I didn't know that. I would have assumed it.

4 Q. Are you aware that the auditors submitted their reports to  
5 the Commissioner of Indian Affairs?

6 A. I would not have -- I would not know who the reports were  
7 actually sent to.

8 Q. Did you know that the commissioner's office submitted the  
9 auditor's findings back to the area office?

10 A. No, but that makes sense.

11 Q. And were you aware that those submissions typically  
12 contained instructions to correct the deficiencies noted?

13 A. No, I did not know that.

14 Q. Now, on pages 34 and 35 of the compilation --

15 MR. SIEMIETKOWSKI: And if it's possible to show those,  
16 I would like to as well. Thank you.

17 BY MR. SIEMIETKOWSKI:

18 Q. On pages 34 and 35, Mr. Pallais, do you see reports  
19 referenced in 1969 and 1972?

20 A. I see something for 1969 and for 1972.

21 Q. Okay. And those are OSR reports, are they not?

22 A. The ones for 1972 are.

23 Q. Are you aware that the 1972 report was a follow-up to the  
24 1969 report?

25 A. If I knew that, I don't recall it.

1 Q. You do know, though, that OSR stands for Office of Survey  
2 and Review?

3 A. That's what it says, yes.

4 Q. Did you know that that was a precursor to the Office of the  
5 Inspector General?

6 A. No, I did not.

7 Q. I would like to show you DX-76, if I could, please. And  
8 specifically, page seven of DX-76. This is the 1972 OSR report.

9 MR. SIEMIETKOWSKI: If we could enlarge that so the  
10 Court and the witness could see that, please.

11 BY MR. SIEMIETKOWSKI:

12 Q. Would you please read that to yourself, Mr. Pallais, and  
13 tell me when you're finished reading it.

14 A. (Witness complies.) I have read them. You just want the  
15 three highlighted?

16 Q. Excuse me?

17 A. You just want the three highlighted?

18 Q. Yes, please.

19 A. Yes, I've read those.

20 Q. Now, at the time you reviewed those extracted quotes in the  
21 compilation, were you aware that this language also existed in  
22 the 1972 OSR report?

23 A. I don't recall being aware of that.

24 Q. I would like to take you from page seven of this same  
25 exhibit to page two of this same exhibit, please.

1                   MR. SIEMIETKOWSKI: If we could please expand that so  
2 the Court and the witness could see it.

3 BY MR. SIEMIETKOWSKI:

4 Q. Could you please read the yellow highlighted section to  
5 yourself and tell me when you're finished, Mr. Pallais?

6 A. (Witness complies.) I've read that.

7 Q. Were you aware that language existed at the time you  
8 reviewed the compilation of quotes from that same report?

9 A. I don't recall seeing this one before.

10 Q. Now, on page 35 of your compilation, Mr. Pallais, you cite,  
11 and earlier I believe you discussed a 1974 accountant's report  
12 for the Crow Agency. Do you see that on the screen,

13 Mr. Pallais?

14 A. I see that. You keep referring to "my report" and "that I  
15 referred to." But it's not my report and I didn't make this  
16 reference. But I do see it.

17 Q. Right, this is not your compilation, as you testified. But  
18 you do see the 1974 bullet there?

19 A. Yes.

20                   MR. SIEMIETKOWSKI: If I could please show the witness  
21 DX-469, and specifically page two.

22 BY MR. SIEMIETKOWSKI:

23 Q. You recall testifying about these forgeries. Right?

24 A. Yes.

25 Q. On direct examination?

1 A. Right.

2 Q. Once it comes up large enough on the screen, Mr. Pallais,  
3 would you please read out loud the yellow highlighted portion?

4 A. "The irregularities reported on herein are currently under  
5 investigation by representatives of the Federal Bureau of  
6 Investigation and the Secret Service."

7 Q. Were you aware of this particular portion of the report when  
8 you earlier discussed the other portions in your direct  
9 examination?

10 A. I don't know if I was or not. I'm not certain this would  
11 have affected my perception at all. So if I had read it, it  
12 would not have mattered to me.

13 Q. Now, page 35 of the compilation also cites a 1981 OIG  
14 report, and the gist of that was that IRMS was a mistake. Do  
15 you see that on your screen?

16 A. Yes, I do.

17 Q. Were you aware that in that very same report that the  
18 statement is made that IIM was excluded from review?

19 A. No.

20 Q. Would that change any weight you gave to that particular  
21 bullet on the screen now?

22 A. No, not at all. I didn't refer to this in my testimony.  
23 Whether IIM was included or not, would not have been affected by  
24 that piece of information.

25 Q. Let me move if I could to page 47 of the historic

1 compilation. This is the last example I'll discuss with you,  
2 Mr. Pallais, of one of the reports cited in the 73-page  
3 compilation.

4 Now, at page 47 do you see the reference, and if it  
5 could be enlarged a bit, do you see the reference to the 1989  
6 Arthur Andersen audit?

7 A. I'm sorry, which bullet should I be looking at now?

8 Q. I believe you testified to it earlier. The bullet regarding  
9 the 100 percent with the negative confirmation. Yes, that one  
10 right there. Do you recall testifying about that in your direct  
11 examination?

12 A. Yes, sir.

13 Q. Now, you testified about this on direct but I want to  
14 clarify a few things. This particular bullet states that  
15 negative confirmation messages were typed on the December 1988  
16 statements that went to account holders. That's what it says.  
17 Right?

18 A. Right.

19 Q. And the bullet further states that 100 percent of the  
20 account holders had complaints about the statements they  
21 received, or generally about mismanagement. Right?

22 A. 100 percent of the responses they got back, yes.

23 Q. Correct, exactly. 100 percent of the responses received.  
24 Correct?

25 Now, I just want to make sure I understood your direct.

1 A negative confirmation is one of three types of confirmation  
2 requests that an auditor might send a recipient or customer.  
3 Correct?

4 A. One of three kinds?

5 Q. Yeah. The other two being positive and blank?

6 A. Okay. Yeah, I would consider blank to be a kind of  
7 positive. But yeah, if you want to divide it up that way, yes.

8 Q. And just to be clear, in a negative confirmation,  
9 Mr. Pallais, the recipient or customer replies only if the  
10 recipient disagrees with the balance provided or with the  
11 information provided. Correct?

12 A. Correct.

13 Q. Thank you.

14 MR. SIEMIETKOWSKI: Thank you, Matthew.

15 BY MR. SIEMIETKOWSKI:

16 Q. Now, regarding the reports more generally cited in the  
17 73-page compilation, none of those reports discuss loss from the  
18 IIM system of, say, a billion dollars, do they?

19 A. I don't recall any of them referring to a loss of a billion  
20 dollars, that's correct.

21 Q. None discussed loss of a million dollars, do they?

22 A. There is a substantial number that discuss amounts that have  
23 been diverted. Whether it's a loss to any individual entity, I  
24 guess I would have to look at each of the comments in context to  
25 determine whether any of them are phrased that way.

1 Q. But you don't recall seeing any kind of numbers on that  
2 magnitude, do you?

3 A. Of loss? Certainly not a billion dollars, no.

4 Q. Now, I want to turn again to some of your testimony  
5 regarding your major disbursement problems. Number one on that  
6 list is "Lack of authorization for disbursements to  
7 beneficiaries and third parties." Do you remember testifying  
8 about that?

9 A. Yes.

10 Q. And in fact, also in your expert report of last August, you  
11 also discussed that on page 26. Do you remember that?

12 A. No.

13 MR. SIEMIETKOWSKI: Would you please show page 26 of  
14 Mr. Pallais' August 2007 report?

15 BY MR. SIEMIETKOWSKI:

16 Q. All right. Would you please read for the record,  
17 Mr. Pallais, the second and third highlighted portions of that?

18 A. I'm sorry, to myself or into the record?

19 Q. Out loud, please.

20 A. "Tests of disbursements are subject to the following  
21 potential weaknesses. The tests do not include obtaining any  
22 evidence of authorization by the account holder except in the  
23 case of payments to third parties."

24 Q. Now, that's consistent with your testimony today, is it not?

25 A. I'm not sure I'm getting your point. This has to do with

1 the tests the auditors were going to do, and my testimony today  
2 had to do with IIM procedures.

3 Q. Right. But similarly to what you say in your report, today  
4 you identified as a major disbursement problem lack of  
5 authorization for disbursements.

6 A. Yes, I did.

7 Q. And that was identified as number one on your list.  
8 Correct?

9 A. That was the first one on the list.

10 Q. I understand. I understand. Now, are you aware,  
11 Mr. Pallais, that funds in IIM accounts are automatically  
12 disbursed to the beneficiary upon reaching \$15?

13 A. No, I was not.

14 Q. Are you aware that for oil and gas payments, such automatic  
15 disbursements go to the beneficiary upon reaching \$5?

16 A. No. I didn't audit these amounts. All I can tell you is  
17 what the auditors observed as weaknesses in the system. So I  
18 presume, if the auditor was criticizing lack of authorization,  
19 they were aware of whatever these rules were.

20 Q. So you wouldn't be aware, for example, that's been the  
21 practice at least since the 1960s?

22 A. No, I wouldn't. I don't know whether those were the  
23 disbursements being criticized by the auditors over the years or  
24 not.

25 Q. And in fact, you have not actually spoken to any Indian

1 beneficiaries about disbursements, have you?

2 A. No, I have not.

3 Q. Likewise, you have not spoken to any individual  
4 beneficiaries about receipts, have you?

5 A. That's correct.

6 Q. The only documents that you reviewed were those provided to  
7 you by plaintiffs' counsel. Correct?

8 A. Yes, that's correct.

9 Q. You did not research and find any documents on your own, did  
10 you?

11 A. No, I did not.

12 Q. You have not met any OHTA accountants?

13 A. No.

14 Q. You have not met any OHTA contractor accountants?

15 A. I don't believe so.

16 Q. You have never been to Lenexa?

17 A. You asked me that in October. I have not been there since  
18 October.

19 Q. Right, thank you. You have not analyzed the LSA report,  
20 have you?

21 A. No.

22 Q. So of course you're not aware of the LSA error rate, are  
23 you?

24 A. No.

25 Q. You have not been to any Interior facilities in Albuquerque,

1 have you?

2 A. No.

3 Q. You have not been to any Federal Records Centers, have you?

4 A. No.

5 Q. Nor to any National Archives facilities?

6 A. No.

7 Q. In the documents you've reviewed, Mr. Pallais, you haven't  
8 seen any direct evidence of unaccounted-for accumulation of  
9 funds, have you?

10 A. I'm going to say no, the way you phrased that.

11 Q. In a similar vein, in the documents you've reviewed, you  
12 have not seen any direct evidence of the government benefitting  
13 from any accumulation of IIM funds, have you?

14 A. I have no idea what the government might have benefitted  
15 from or not. The audit reports don't talk about that.

16 Q. In fact, none of the reports in this 73 pages talk about  
17 that, do they?

18 A. I'm not sure that's true.

19 Q. Can you point to any that do?

20 A. No, I can't offhand. But I cannot say that the statement  
21 you made is true. It may be, but I don't know. I did not  
22 review the reports with that in mind. And I can envision  
23 situations where that would not be the case, but I just can't  
24 testify that it is.

25 Q. Now, you're aware, are you not, Mr. Pallais, that plaintiffs

1 in many instances rely upon the same historic documents in  
2 calculating both their collections and disbursement figures?

3 A. They might. I have not made much of a study of how  
4 plaintiffs calculate receipts or disbursement figures.

5 Q. So you're not aware of which documents they pulled their  
6 figures from?

7 A. I might have read it, but it's not something that I paid a  
8 lot of attention to.

9 Q. Well, let me ask you this, Mr. Pallais: Are you aware at  
10 all that the plaintiffs used government records in calculating  
11 the \$58 billion which they seek?

12 A. I believe that --

13 MR. SMITH: Objection. This is outside the scope of  
14 direct, and irrelevant to his testimony.

15 THE COURT: I'm sorry, repeat the question.

16 BY MR. SIEMIETKOWSKI:

17 Q. Are you aware, Mr. Pallais, at all, that the plaintiffs have  
18 used government records in calculating the \$58 billion which  
19 they request?

20 THE COURT: I'll sustain the objection.

21 MR. SIEMIETKOWSKI: No further questions, Your Honor.

22 THE COURT: Okay. Mr. Smith?

23 MR. SMITH: Just a few questions, Your Honor.

24 **REDIRECT EXAMINATION**

25 BY MR. SMITH:

1 Q. You were asked about whether you knew if the documents were  
2 provided to you from the NORC database. Do you recall that?

3 A. Yes.

4 MR. SMITH: And if you could just pull up, for example,  
5 Document 18, 1928.

6 A. Yes.

7 BY MR. SMITH:

8 Q. And is there a Bates stamped number NORCMA?

9 A. Yes.

10 Q. And was that on a number of these documents that you  
11 reviewed, either NORCMA or NORCMAP?

12 A. Yes, I recall seeing those.

13 Q. Next question: You were asked about the selection of the  
14 documents in this report. Of all the audits that you reviewed,  
15 and you said you've reviewed 300-some back in October, and you  
16 reviewed even more now, how many of those audits would you  
17 describe as positive audits?

18 A. I would say of the 300 I reviewed in October, there weren't  
19 more than a handful, five perhaps, that did not have criticisms  
20 of internal control at the IIM facilities.

21 Q. Okay. There's a document that you were shown regarding the  
22 1928 report.

23 MR. SMITH: Could we pull that up? It's a defendant's  
24 exhibit, the highlighted language. 1928 report, 467. I'm  
25 sorry, 469. I'm sorry, that's not the one. We were looking at

1 1928.

2 Your Honor, I'll move ahead.

3 BY MR. SMITH:

4 Q. Do you recall, you were asked about the 1928 document, and  
5 there's a reference to check registers for major disbursements?

6 A. I remember answering a question about that, but I would have  
7 to look at the document. It's not something I saw before today.

8 And frankly, I never really got the chance to look at  
9 the additional document I was shown today to see how if at all  
10 it related to the comments in the compilation. But I didn't get  
11 a chance to do that. I was only asked whether I was aware of  
12 it.

13 Q. You were asked by Mr. Siemietkowski whether you were aware  
14 that after an audit there would be instructions to the agency to  
15 correct the problems. Do you recall that?

16 A. Yes.

17 Q. In your review of the audits, as a routine matter, were the  
18 problems corrected or did they recur?

19 A. Most of the problems continued to recur past -- certainly  
20 past the 1970s, when this policy apparently was in place.

21 Q. Okay. And you were asked about a 1972 audit where it was  
22 suggested there were matters that significantly improved. Do  
23 you recall that?

24 A. Yes.

25 Q. What happened by 1982, when Arthur Andersen stepped in? I'm

1       sorry, the GAO looked at it, or the comptroller?

2       A.   Well, there continued to be problems.  There were --  
3       regardless of what improvements there might have been, the story  
4       across 30 years after that was that there continued to be  
5       problems over controls on disbursements.

6       Q.   Okay.  And finally, you were asked about accumulation of IIM  
7       funds, and you expressed some hesitancy the way the question was  
8       worded.  What was your hesitancy?

9       A.   I don't recall specifically that the -- there were comments  
10      in the reports about amounts not being paid out, and there was  
11      some question in my mind whether his question encompassed those  
12      or not.  And ultimately I concluded that I didn't think his  
13      question technically encompassed that, so I agreed with  
14      Mr. Siemietkowski's proposition.  But it requires a certain  
15      level of sentence parsing to get there.

16      Q.   Okay.  But is it fair to say that you did identify instances  
17      within the audits where money was supposed to be paid out that  
18      was not?

19      A.   That's correct.

20                 MR. SMITH:  No further questions, Your Honor.

21                 THE COURT:  All right.  Mr. Pallais, I think that  
22      completes your testimony.  Thank you.  You may step down.

23                 Mr. Dorris?

24                 MR. DORRIS:  Your Honor, we have some administrative  
25      matters in terms of moving in some exhibits.  I don't know if

1 you want it before we rest, if you want to take that up now, or  
2 you prefer to move on with a witness and us take that up at some  
3 other point.

4 THE COURT: You're through with witnesses?

5 Does the government have a witness?

6 MR. KIRSCHMAN: Yes, Your Honor.

7 THE COURT: Let's call -- let's deal with the  
8 administrative matters later. Thank you. But are you telling  
9 me that except for those administrative matters, the plaintiffs  
10 rest?

11 MR. DORRIS: That is correct, Your Honor.

12 MR. KIRSCHMAN: Your Honor, and with that, I want to  
13 inform the Court that defendants plan to file a Rule 52(c)  
14 motion later today, and would like --

15 THE COURT: It will be deemed filed now.

16 MR. KIRSCHMAN: And we would like an opportunity to  
17 argue that briefly tomorrow.

18 THE COURT: All right.

19 MR. DORRIS: Your Honor, may I approach the witness  
20 stand to get an exhibit?

21 THE COURT: Don't hurt anybody up there.

22 MR. DORRIS: Is that a yes?

23 THE COURT: That's a yes.

24 MR. DORRIS: Thank you, Your Honor.

25 MR. KIRSCHMAN: Your Honor, to let you know, our first

1 witness will be Michelle Herman. And following her will be  
2 Dr. Ed Angel, both of whom you have heard from in October.

3 THE COURT: All right.

4 MR. QUINN: Good afternoon, Your Honor. Michael Quinn  
5 for the defendants.

6 THE COURT: Mr. Quinn.

7 MR. QUINN: We would like to call Ms. Michelle Herman  
8 to the stand.

9 THE COURT: Very well.

10 (Oath administered by Courtroom Deputy.)

11 **(MICHELLE HERMAN, DEFENDANT witness, having been duly sworn,**  
12 **testified as follows:)**

13 **DIRECT EXAMINATION**

14 BY MR. QUINN:

15 Q. Good afternoon. Would you please state your name for the  
16 record?

17 A. Michelle Herman.

18 Q. Welcome back. You testified and spent some time with us and  
19 the judge in the hearing last October. Is that right?

20 A. Yes, I did.

21 Q. If you could just refresh our memory here, collective  
22 memory, and give us just a brief recap of the topics you  
23 testified about last October.

24 A. Yes. I testified about our data completeness validation  
25 reports, the accounting reconciliation tool, the litigation

1 support accounting effort, and the land-to-dollar testing, as  
2 well as our work on throughput.

3 Q. I'm sorry, what was the last part?

4 A. Our work on the throughput estimate.

5 Q. Are you referring to a document that was numbered as AR-171?

6 A. Yes, I am.

7 Q. Are you still employed with FTI Consulting?

8 A. Yes, I am.

9 Q. And your title currently today?

10 A. Managing director.

11 Q. Is that the position you held last October when you  
12 testified?

13 A. Yes, it is.

14 Q. And if you could just briefly remind us of the area of the  
15 company in which you work.

16 A. I work within the technology practice in a group referred to  
17 as financial and enterprise data analytics.

18 Q. And how long have you been with FTI?

19 A. Since November 2003.

20 Q. And I believe you testified last fall you had been involved,  
21 employed by other consulting firms. Is that right?

22 A. Yes. Prior to FTI, I was employed by KPMG. And prior to  
23 KPMG, by Arthur Andersen.

24 Q. And while employed with those firms and now with FTI, have  
25 you had occasion to work on matters pertaining to the Individual

1 Indian Money accounts?

2 A. Yes, I have.

3 Q. Did your work involve the study of IIM account data,  
4 bookkeeping records, as well as Interior's bookkeeping practices  
5 for IIM historically?

6 A. Yes, I have.

7 Q. Would you say that most of your professional career has been  
8 devoted to the examination and study of the Indian Trust records  
9 and Interior's bookkeeping practices historically?

10 A. Yes, it has.

11 Q. In fact, how long have you been working with respect to  
12 individual Indian accounting and data?

13 A. Since January 1997.

14 Q. And does that include work involving detailed financial  
15 examination of the IIM system?

16 A. Yes, it has.

17 Q. Your college education, your business degree came from what  
18 school?

19 A. The University of California at Berkeley.

20 Q. And your degree is in what field?

21 A. In business administration.

22 Q. I know this is a very broad question, but could you just  
23 list the major projects that you've participated in since 1997  
24 that relate to the IIM system in some way or another?

25 A. Our initial work with the information was gathering data

1 from the IRMS system that was located on backup tapes, and  
2 restoring that data and creating a database with all of the  
3 information from February of '85 forward.

4 Our next --

5 Q. What system was that where the data was coming from?

6 A. The IIM subsystem within the IRMS system.

7 Q. Okay.

8 A. Our next major project was a document search and collection  
9 effort that was referred to as Paragraph 19. Subsequent to the  
10 Paragraph 19 collection effort, we worked with OHTA on designing  
11 and executing their historical accounting plan.

12 Q. Okay. And the Paragraph 19, when you described that, what  
13 was the -- what did the project entail that you were doing?

14 A. We worked both with the Interior Department and the Treasury  
15 Department to locate documents related to the five named  
16 plaintiffs and their agreed-upon predecessors.

17 Q. Do you remember how many agreed-upon predecessors were  
18 involved in that examination?

19 A. Approximately 31.

20 Q. Were you looking just for accounting information relating to  
21 these individuals?

22 A. No. Any information that we could locate relative to those  
23 individuals.

24 Q. And then you mentioned you worked in connection with the  
25 Office of Historical Trust Accounting?

1 A. That's correct.

2 Q. What did you -- what were you engaged to do for them?

3 A. We've worked with OHTA on numerous projects, ranging from  
4 assisting with writing the plans that they've submitted to data  
5 completeness validation and accounting projects.

6 Q. Could you describe the accounting projects that you've been  
7 involved in?

8 A. The Litigation Support Accounting, which was the  
9 reconciliation of sampled and high-dollar transactions.

10 Q. And what types of work did you do specifically with respect  
11 to that?

12 A. We assisted in designing the tool that was utilized to  
13 actually perform the accounting work, as well as reconciling  
14 transactions that had been selected.

15 Q. Are you referring to the ART program?

16 A. That's correct.

17 Q. Is that the computer program you demonstrated for the Court  
18 last fall?

19 A. Yes, it is.

20 Q. And what is that? Again, briefly, what is that used for?

21 A. The ART program itself contains the financial transactions,  
22 as well as the supporting documentation and the resulting  
23 product of the accounting firm's analysis.

24 Q. For what class of information?

25 A. For the sampled -- well, all of the transactional data is

1 contained within the ART, documents that have been gathered over  
2 time, both in connection with the LSA project and other projects  
3 that OHTA has performed, in addition to the results from the  
4 accounting firm, specifically from the LSA project.

5 Q. What specifically were you doing in connection with the  
6 account reconciliation?

7 A. I assisted in designing the tool itself, and actually  
8 reconciled transactions.

9 Q. As part of the LSA?

10 A. Yes.

11 Q. As part of that project, about how many reconciliation -- I  
12 don't know how you count them, but how many reconciliations of  
13 accounts did you -- were you involved in?

14 A. We reconciled approximately 6,500 transactions.

15 Q. And then I think you mentioned data completeness validation.  
16 Could you describe what that task involved?

17 A. Yes. We were measuring the completeness of the electronic  
18 data as it exists today relative to the data when it was process  
19 the historically.

20 Q. And where was that data -- what data were you testing?

21 A. Initially, we were testing the IRMS data, and later we added  
22 the TFAS data to that database.

23 Q. Did you produce -- provide some reports that were entered as  
24 exhibits at your testimony last fall?

25 A. Yes, I did. We produced six regional reports and one

1 overall report last year.

2 Q. As part, up to that report date last October, are the report  
3 dates September?

4 A. September 2007.

5 Q. As of that date, the report date, about how many  
6 transactions had you and your team studied?

7 A. Approximately 114 million.

8 Q. 114 million?

9 A. That's correct.

10 Q. Through last October. Is that project continuing?

11 A. Yes, it has.

12 Q. Are you anticipating FTI will provide additional reports?

13 A. Yes. We're going to provide eight regional reports this  
14 September, and a new overall report.

15 Q. So does that mean that there are two new regional reports in  
16 this next round of reporting?

17 A. Yes. There are two new regional reports, plus the  
18 additional work that we've performed on the initial six regions.

19 Q. I take that to mean then that you have continued to work on  
20 the DCV testing since you testified last fall. Is that correct?

21 A. That's correct.

22 Q. About approximately how many transactions have you examined  
23 as of today?

24 A. As of today, it's just over 119 million.

25 Q. You're up to 119 million?

1 A. That's correct.

2 Q. Did you have any involvement in land-to-dollar pilot  
3 testing?

4 A. Yes, I did.

5 Q. Can you describe what that testing involved?

6 A. We were involved in the pilot test at the Horton Agency, and  
7 the purpose of that test was to evaluate whether or not funds  
8 had been collected that were not in fact posted to the IRMS or  
9 TFAS systems.

10 Q. And have you more recently been requested to undertake  
11 analysis of collections, further analysis of collections into  
12 the IIM system?

13 A. Yes, I have.

14 Q. And what was the purpose of that project?

15 A. To update AR-171 to provide a better estimate of collections  
16 and disbursements.

17 Q. And have you prepared an update to AR-171, that table?

18 A. Yes, I have.

19 MR. QUINN: Could we put up AR-171?

20 BY MR. QUINN:

21 Q. With respect to the preparation of the original AR-171 that  
22 you testified about last fall, do you recognize that document?

23 A. Yes, I do.

24 Q. What work did you do leading up to the preparation of the  
25 document that got filed with the Court?

1 A. AR-171?

2 Q. Yes.

3 A. Our firm had gathered information from both NORC and Morgan  
4 Angel and Clifton Gunderson for some of the earlier years, and  
5 we had performed work from '86 forward using the IRMS and TFAS  
6 data.

7 Q. Just so the record is clear, you've identified three  
8 organizations. Could you specify what their role was?

9 A. Yes. The information from 1909 through 1971 was an estimate  
10 initially provided by NORC of total collections. And from 1972  
11 through 1985 was information gathered by Clifton Gunderson.

12 Q. And who are they?

13 A. They are another accounting firm employed by OHTA. And some  
14 of the balance data at that point had been gathered by Dr. Angel  
15 and Morgan Angel & Associates.

16 Q. And what kind of work did they do?

17 A. They gathered historical records that they provided to me.

18 Q. Are they accountants?

19 A. Clifton Gunderson is, but the other two firms are not.

20 Q. What do you understand Morgan Angel, their firm to be?

21 A. Morgan Angel & Associates is a historian firm.

22 Q. With your appearance today, how many times have you  
23 testified in this case?

24 A. This is the third time.

25 Q. And besides last October, when else did you testify?

1 A. In what's referred to as Trial 1.5.

2 Q. Do you remember approximately when that was?

3 A. No, I'm sorry, I do not.

4 Q. In each case before, have you testified as a fact witness?

5 A. Yes, I have.

6 Q. And are you here today to testify based on your own personal  
7 knowledge and experience in working with the Department of  
8 Interior over the last 11 years?

9 A. Yes, I am.

10 Q. Let's see if we can give the Court of a preview of your  
11 testimony at this hearing.

12 What matters have you and FTI been working on since you  
13 testified last year, besides the data completeness validation  
14 work you've described?

15 A. We continued work on the paper era accounting, and we've  
16 continued work to update AR-171.

17 Q. Okay. What work has FTI done with respect to updating  
18 AR-171?

19 A. We've worked with Morgan Angel & Associates to gather  
20 additional historical documents with NORC to assist in preparing  
21 the early year estimates, and to refine our double-counting  
22 analysis during the later years.

23 Q. And have you in fact prepared an updated table?

24 A. Yes, I have.

25 Q. And are you prepared to talk about that in the course of

1 this hearing?

2 A. Yes, I am.

3 Q. Have you also been asked by Department of Interior to study  
4 consolidated records relating to the IIM system?

5 A. Yes, I have.

6 Q. And when did you undertake that research?

7 A. That began several months ago.

8 Q. Could you briefly describe the kinds of research that you've  
9 conducted since you began the project?

10 A. We've worked with Morgan Angel & Associates in an attempt to  
11 identify historical reports that would report IIM collections  
12 and disbursements at an aggregate level.

13 Q. Are you prepared to testify today about your personal  
14 knowledge from your experience in working with the IIM data, and  
15 from your research into the historical records about IIM  
16 accounting, concerning the historical flow of funds in the IIM  
17 system?

18 A. Yes, I am.

19 Q. Did you happen to prepare a diagram relating to your study  
20 of the flow of funds?

21 A. Yes, I have.

22 Q. There's a poster over here to your right. Is that a diagram  
23 that you prepared?

24 A. Yes, it is.

25 MR. QUINN: Your Honor, for purposes of identification

1 in the record, we have marked a paper copy of the same diagram  
2 as Defendant's Exhibit 370. It's the exact same, just a  
3 paper-sized version of the chart. I would like to offer it to  
4 the Court. It might be easier to read.

5 THE COURT: All right.

6 BY MR. QUINN:

7 Q. Are you prepared today to describe what you've observed in  
8 the historical flow funds through the IIM system as represented  
9 in your diagram?

10 A. Yes, I am.

11 Q. Let's talk about your chart. We'll come back to some of the  
12 other topics you may address later.

13 What did you study in the IIM system that led you to  
14 the diagram that's up here on the poster and in Exhibit DX-370?

15 A. The primary information that we studied was the IRMS and  
16 TFAS data from 1985 through 2000, supplemented by the historical  
17 reports gathered by Morgan Angel & Associates.

18 Q. And what were you looking for?

19 A. To identify the ways that monies were collected into, moved  
20 within the system, and were disbursed from the system.

21 Q. How is that historical flow of funds relevant to the issue  
22 of collections and disbursements, the throughput issue?

23 A. It helps explain how monies come into the system, how they  
24 may be double counted within the system, and how to classify the  
25 monies within the system into different revenue categories.

1 Q. And when you talk about the system, the IIM system, how  
2 would you describe your understanding of that term? What do you  
3 mean when you say IIM system?

4 A. All the monies that come into IRMS or TFAS, regardless of  
5 the source of those monies.

6 Q. And what's your understanding of those fund flows based on?

7 A. Based on the 11 years of work that I've performed for the  
8 Interior Department.

9 Q. And you mentioned the additional work you've been  
10 conducting. Is it also based on the work you've done that you  
11 mentioned since March?

12 A. Yes, it is.

13 Q. By your personal work on the IIM records and data over the  
14 last 11 years, and the additional work you said you've done  
15 recently, have you gained an understanding of how the IIM system  
16 is operated historically?

17 A. Yes, I have.

18 Q. And that's reflected in what's been marked for  
19 identification as DX-370?

20 A. Yes, it is.

21 Q. And that's the same as what's on our poster over here?

22 A. Yes, it is.

23 Q. What does the diagram represent generally?

24 A. The collection of money into, the movement within, and the  
25 disbursement from the IIM system.

1 Q. And the information and experience you've had with the data,  
2 you're relying on -- what are you drawing on in terms of  
3 identifying those fund flows? What experiences?

4 A. Not only the data completeness validation work, but the  
5 accounting work that we've performed through the LSA project,  
6 some of the work that we performed with the Special Deposit  
7 Accounts, as well as historical records that we've analyzed  
8 through the Paragraph 19 effort and our work with Dr. Angel  
9 recently.

10 Q. I don't think we talked -- you mentioned the SDA work,  
11 Special Deposit Account work you just mentioned now. Could you  
12 describe what you were doing?

13 A. OHTA was tasked with distributing monies from Special  
14 Deposit Accounts that had a balance as of 2002, and we worked  
15 with them to identify monies in some of the higher-value  
16 accounts and the appropriate owners of those monies.

17 Q. And what information did you have to research? What records  
18 did you have to research in order to make -- provide that  
19 research assistance?

20 A. We had to create a complete account history for each Special  
21 Deposit Account that we were analyzing. To the extent that that  
22 wasn't contained within the electronic era, we had to go back  
23 and locate the paper ledgers, and then we had to identify the  
24 funds that had been distributed already from those accounts and  
25 the monies that were remaining in those accounts.

1 Q. Have you looked at other paper records more generally as --  
2 going back into the paper era, as part of your task of trying to  
3 understand the flow of funds historically?

4 A. I've looked at several audits that Dr. Angel located from  
5 the 1940s, some Commissioner of Indian Affairs reports from the  
6 early 1900s, some documents that we had located from the 1970s,  
7 in addition to the documents that have been collected to date  
8 for the paper ledger accounting.

9 Q. I would like to show you one of the exhibits.

10 MR. QUINN: Excuse me, Your Honor. We have a set of  
11 copies of exhibits we'll be using for plaintiffs.

12 Could you zoom in on the top part of that, just so the  
13 witness can see it better?

14 BY MR. QUINN:

15 Q. All right. This has been marked for identification as  
16 Defendant's Exhibit 485. Can you identify, describe what  
17 that -- have you seen this document before?

18 A. Yes, I have.

19 Q. Is this the sort of document that you just referring to,  
20 things that you looked at?

21 A. Yes, it is.

22 Q. Could you just describe generally what this is?

23 A. This is a review performed by a BIA clerk of the Winnebago  
24 Agency, an audit of IIM accounts at that agency for the time  
25 frame of June 1st, 1938 through December 31st, 1939.

1 Q. And you looked back -- when you say you looked back into the  
2 paper era in terms of understanding fund flows, were you looking  
3 at documents similar to this?

4 A. Yes, I was.

5 Q. And in fact, do you have some examples to share with the  
6 Court later today about the fund flows indicated in this  
7 exhibit?

8 A. Yes, I do.

9 Q. We'll come back to those records in a moment.

10 MR. QUINN: If you could put up DX-33. It's in  
11 evidence. Zoom in on just the cover so we can see the cover  
12 better.

13 I believe this has been mentioned already in court,  
14 Your Honor, Defendant's Exhibit 33 in evidence, titled  
15 "Commissioner of Indian Affairs" -- "Report of the Commissioner  
16 of Indian Affairs," and the date for the fiscal year ended  
17 June 30, 1910.

18 BY MR. QUINN:

19 Q. Ms. Herman, have you seen this document before?

20 A. Yes, I have.

21 Q. Is this another sort of the paper era record you would have  
22 looked at as part of getting an understanding of the fund flows,  
23 looking at those in comparison to what you've seen in the  
24 electronic era?

25 A. Yes, I did.

1 Q. We'll come back to that in a moment.

2 Let's get an overview of what your diagram is  
3 displaying. I see it's divided into roughly three general  
4 parts. And let's just talk for a second about what the left  
5 side, the green section, is intended to show by your diagram.

6 A. The left section of the diagram is meant to reflect  
7 collections into the system.

8 Q. Okay. And the middle part, the middle section which is  
9 mostly blue, what is that intended to depict?

10 A. Transfers of monies within the system.

11 Q. And then the right third of your diagram, the gray boxes on  
12 the right, what is that intended to depict?

13 A. Disbursements from the system, and the people or parties to  
14 whom those funds are disbursed.

15 Q. Did you prepare some slides that can help step us through  
16 your diagram?

17 A. Yes, I did.

18 Q. Ms. Herman, we've put up on the screen here slide one. Is  
19 this the first slide in your slide show?

20 A. Yes, it is.

21 Q. Did you prepare this slide? Not the graphics, but the  
22 information that went into the slide presentation?

23 THE COURT: I think all of those formalities, you can  
24 sort of skip through those. This is her deal, she put it  
25 together. I understand that.

1           MR. QUINN: Fine, Your Honor. Let's go. Get the show  
2 on the road.

3 BY MR. QUINN:

4 Q. Could you tell us about the very first box that's here, and  
5 what that represents?

6 A. The first box lists the type of income collected into the  
7 system; other receipts including timber, oil and gas, typical  
8 land-based income; Tribal IIM; judgment and per capita monies;  
9 Osage annuity payments; and interest monies.

10 Q. And there's a notation on the slide here at the bottom.  
11 Could you describe what that is intended to show?

12 A. The total collections into the system, which is reflected in  
13 the update to AR-171, from the period 1887 through 2007, were  
14 14.3 billion.

15 Q. And you have a subsection there, 1985 to 2000, of  
16 4.6 billion. What does that indicate?

17 A. That's the amount of money collected during that time frame,  
18 which was the starting point for the analysis of these -- of  
19 this chart.

20 Q. Is that the era that you most closely studied?

21 A. Yes, it is.

22 Q. Why didn't you study the entire 120-year history?

23 A. There would be a significant number of documents that you  
24 would have to gather to do that, and there simply wasn't enough  
25 time.

1 Q. In any case, you used the period through 2000. Why didn't  
2 you look into the more recent era as part of your investigation?

3 A. Beginning in August of 1998 there was a conversion to the  
4 TFAS system, and beginning in March of 1999, the Tribal Trust  
5 and the individual trusts were held within the same system. And  
6 so it's a much more time-consuming effort to appropriately  
7 categorize those monies as tribal or individual.

8 Q. But if you had the time, you could take that and include  
9 that as part of your analysis?

10 A. Yes, I could.

11 Q. Based on your 11 years' experience studying the IIM system  
12 records, does your diagram also reflect historical flow of funds  
13 in the paper era, as well?

14 A. For the documents that I've analyzed to date, yes.

15 Q. Is your understanding -- that's based on the historical  
16 records you've looked at?

17 A. Yes, it is.

18 Q. Let's talk about exactly what's in the box, the green box in  
19 the left third, that green section.

20 The labels in there look familiar to me. What do those  
21 represent?

22 A. Those are the labels from AR-171, as well as our update,  
23 DX-371.

24 Q. Are you saying these categories here refer back to these  
25 columns in the collections? (Indicating.)

1 A. Yes, they do.

2 MR. QUINN: And if we can zoom in to the top part, the  
3 left edge of the document, please. That's great.

4 BY MR. QUINN:

5 Q. The first in the "Collections" category, Column B, is  
6 labeled "Interest." Could you describe what that covers?

7 A. That would include interest earned on individual and  
8 non-individual accounts in the IIM system.

9 Q. Is all interest that's been collected into the IIM system  
10 over its history appear in that category on your table?

11 A. No. Only the interest that we were identified, because it  
12 was coded as such.

13 Q. What do you mean, coded as such?

14 A. Within the electronic system there's a revenue code that  
15 indicates the type of income, and in many instances that labels  
16 the income as miscellaneous.

17 So this only includes income that's been labeled as  
18 interest or, to the extent that we had an investment report,  
19 interest in those reports.

20 Q. If there's some interest that's not in the interest column,  
21 does it appear elsewhere in the table?

22 A. It would be included in other receipts.

23 Q. That's Column F of AR-171?

24 A. That's correct.

25 Q. So if you ignore Column B, the interest column, in totaling

1 up the collections, does that total still contain interest?

2 A. It would contain some interest.

3 Q. The next column, Column C in AR-171, is labeled "Osage  
4 quarterly annuity." What does that cover?

5 A. That covers payments from the Osage tribe to headright  
6 owners that enter into the IIM system.

7 Q. Is all Osage headright income represented in that column?

8 A. No, it is not.

9 Q. Could you describe what is not -- what Osage headright  
10 income is not in that column?

11 A. There are some payments that are made directly from the  
12 Tribal Trust to owners of head rights, and that money would not  
13 be included in this column.

14 Q. So there's some money -- when you, on your diagram, look at  
15 the green box, look over here, is that the Osage annuity you're  
16 referring?

17 A. Monies paid directly from the Tribal Trust system would not  
18 be included in that green box.

19 Q. So what does that box represent, the Osage annuity in the  
20 box?

21 A. Only funds that were actually collected into the IIM system.

22 Q. If I were to try to draw on this chart the Osage headrights  
23 income paid directly out of the Tribal Trust, where would I show  
24 it?

25 A. You would need to create another funds flow to represent

1 monies moving from the Tribal Trust.

2 Q. The next column in AR-171 is listed as "judgment/per  
3 capita." What does that cover?

4 A. That includes judgment funds and per capita payments from  
5 tribes that actually enter into the IIM system.

6 Q. And for years prior to, I think it looks like 1986, there  
7 isn't an entry in the "judgment/per capita" column. Is that  
8 right?

9 A. That's correct.

10 Q. Does that mean there was no judgment or per capita money  
11 earned in those years, or received in those years?

12 A. No, it only means that we weren't able to separately  
13 identify them.

14 Q. So for an earlier period, if there is a judgment/per capita  
15 receipt, where would that be reflected on AR-171?

16 A. In the "other receipts" category.

17 Q. Column E in AR-171 is the Tribal IIM, and I think you  
18 testified about this last fall. Could you briefly describe what  
19 that includes?

20 A. That includes collections into what I refer to as Tribal IIM  
21 accounts. Those accounts typically have a T in the fourth  
22 character of the account number.

23 Q. You're talking about the letter "T," that's what they go by?

24 A. Yes.

25 Q. Is all tribal money that's in the IIM system in a T-labeled

1 account?

2 A. No, it is not.

3 Q. So does the Column E, Tribal IIM in AR-171, does that  
4 include all tribal money that's flowing through the IIM system?

5 A. No, it does not.

6 Q. Have you found examples of other Indian tribe money that is  
7 not Tribal IIM denominated as Tribal IIM?

8 A. Yes, I have.

9 Q. And you have examples that we'll walk through later?

10 A. Yes, I do.

11 Q. Other tribal money that's not here in the Tribal IIM column,  
12 where would it show up in your table?

13 A. In other receipts.

14 Q. That brings us to "Other receipts," F, in table AR-171. What  
15 collections fall into "Other receipts"?

16 A. As we discussed, to the extent that interest or judgment  
17 funds or per capita monies aren't specifically identified, they  
18 would be included in other receipts, in addition to what we  
19 refer to as land-based revenues. So land sales, oil and gas  
20 collections, timber payments, things of that nature.

21 Q. Are there other types of collections you've seen that come  
22 in that would fall into the other receipts total?

23 A. Yes. To the extent that bid deposits or bonds or things of  
24 that nature came into the system, they would be reflected in  
25 other receipts.

1 Q. How about money earned from a school play? Have you seen  
2 that?

3 A. Yes, I did.

4 Q. Do you have an example of that to share with the Court  
5 later?

6 A. Yes, I do.

7 Q. How about money that's being held as part of a cemetery  
8 fund? Have you seen that in the IIM system?

9 A. Yes, I have.

10 Q. So in the course of your experience, have you come across  
11 such a variety of types of collections over the years?

12 A. Yes, I have.

13 Q. So in going back to 370, if we could put slide one back on  
14 the screen, DX-370, and your green box of collections on the  
15 right, you've used the same labels in categorizing the types of  
16 selections. Is that right?

17 A. Yes, I have.

18 Q. Why are they in reverse order from your table?

19 A. "Other receipts" is the primary category of revenue within  
20 the examples, so I've labeled that first.

21 Q. If we could go to slide two and ask you about the next part  
22 of your diagram. Going from the green box, you have two arrows,  
23 two green arrows. What do they represent?

24 A. In some instances, monies are posted directly to the  
25 individual accounts themselves when they're collected. In other

1 instances, the monies are posted to what I've referred to as  
2 non-individual accounts.

3 Q. That's the box at the top?

4 A. That's correct.

5 Q. In the blue box. The entire blue section, what does that  
6 represent?

7 A. The IIM system itself.

8 Q. And let's talk about the different parts that make up that  
9 center blue box. Does this represent the internal workings of  
10 the IIM system?

11 A. Yes, it does.

12 Q. And you have two boxes, an upper box labeled "Non-Individual  
13 accounts" and lower, "Individual accounts." Why did you present  
14 it this way?

15 A. As I mentioned, in some instances monies post directly to  
16 those individual accounts, and in other cases the monies post to  
17 the non-individual accounts, at which point funds may transfer  
18 or may be disbursed.

19 Q. And let's look at the top box for a moment, labeled  
20 "Non-Individual accounts." You have some labels inside that  
21 box. Could you describe what those mean?

22 A. "SDA" stands for Special Deposit Account; "Tribal IIM"  
23 refers to the T accounts that we were discussing earlier; and  
24 "Other administrative accounts" is a catch-all for the rest of  
25 the administrative accounts within the system.

1 Q. Could you give an example or two of the other administrative  
2 accounts that you've seen?

3 A. For instance, interest accounts within the system or  
4 mislabeled accounts within the system.

5 Q. Are there such things as bid deposit accounts?

6 A. Bid deposits could be within the SDA account or an escrow  
7 account.

8 Q. Could there be administrative accounts for collection of  
9 government fees?

10 A. Yes, that's possible.

11 Q. In your diagram where you say, "Non-Individual," what do you  
12 mean by that?

13 A. Monies that may or may not actually transfer to an  
14 individual account at the end of the day.

15 Q. So in this part of the process, do you know that they're  
16 individual?

17 A. No, not at that point.

18 Q. Do you know for sure that they're going to a trust account?

19 A. No, you do not.

20 Q. You have a circle around the "SDA" and "Tribal IIM" and  
21 other administrative -- an arrow in a circle. What does that  
22 reflect?

23 A. That there are actually transfers between administrative  
24 accounts within the system.

25 Q. You have a label on the arrow, "Admin-to-admin transfers."

1 Right?

2 A. That's correct.

3 Q. Could you describe a typical type of  
4 administrative-to-administrative transfer that you've seen?

5 A. For instance, when range payments are going to be paid out,  
6 in some cases you'll see a debit from all of the various range  
7 accounts for that particular agency, and a credit of all of  
8 those funds into one singular Special Deposit Account, to  
9 facilitate distribution.

10 Q. And did you bring some examples showing these kinds of  
11 administrative-to-administrative transfers?

12 A. Yes, I did.

13 Q. And we'll talk about those after we get through your slides  
14 here.

15 Let's look at the lower part of the blue box that's  
16 labeled "Individual accounts." What funds are represented by  
17 that box?

18 A. Monies that are actually credited to individuals within the  
19 system. So land-based accounts refers to accounts where the  
20 primary source of revenue would be a lease, for instance.

21 Q. Would these be accounts in the name of a particular  
22 recipient?

23 A. Yes, they would.

24 Q. And you have in there labeled "Land-Based," "Judgment," and  
25 "Per Capita." Could you describe what you're intending to

1 depict there?

2 A. Land-based accounts would contain monies primarily from the  
3 use of land. So land sales, farm and pasture leases, range  
4 income, things of that nature.

5 Judgment accounts would typically be accomplished for a  
6 minor or someone deemed to be incompetent to receive judgment  
7 monies; similar to that would be per capita accounts.

8 Q. And you have a circle -- or an arrow in a circle going  
9 around those identified types of accounts that says,  
10 "Individual-to-individual transfers." What are you depicting  
11 there?

12 A. In some instances you'll see transfers among individual  
13 accounts. A typical example would be either a probate or a land  
14 sale.

15 Q. Actually, a movement of money from one individual account to  
16 another?

17 A. That's correct.

18 Q. One arrow we haven't discussed is the one in the middle  
19 between the two boxes that says, "Transfers." Could you describe  
20 what that depicts?

21 A. Yes. To the extent that the monies collected into the  
22 non-individual section at the top of the chart are deemed to be  
23 individual monies, they're transferred down to the individual  
24 accounts.

25 Q. Is it possible that tribal money could move -- be

1 transferred that way as well?

2 A. Yes, that is possible.

3 Q. Have you seen that happen?

4 A. Yes, I have.

5 Q. Could you give an example that you've seen of that type of  
6 tribal money moving into an individual account?

7 A. The most typical example would be a loan from the tribe to  
8 individual.

9 Q. A loan?

10 A. Yes.

11 Q. Why is it important to have an understanding about all the  
12 different types of internal transfers that you've described?

13 A. Such that you can reduce potential double-counting in your  
14 collection estimate.

15 Q. Last fall when you were talking about your DCV study, I  
16 believe you testified about a similar double-counting issue when  
17 studying postings. Is that right?

18 A. That's correct.

19 Q. I would like to look back at that one exhibit that we  
20 discussed last October.

21 MR. QUINN: If we could go to DX-152A in evidence, at  
22 page 15. Can we zoom in on that?

23 BY MR. QUINN:

24 Q. Do you recall your testimony about this example, Ms. Herman?

25 A. Yes, I do.

1 Q. Describe what you were talking about here with respect to  
2 counting transactions as part of the data completeness analysis?

3 A. This is when we were discussing the manner in which we count  
4 throughput for the data completeness validation reports. And we  
5 were discussing in essence that we would count each movement of  
6 money instead of the unique collection and the unique  
7 disbursement.

8 Q. Now, when you're over here talking about the collection and  
9 disbursement of funds over the history of the IIM system, do you  
10 want to count this way?

11 A. No, you do not.

12 Q. So what needs to be understood then about these internal  
13 transfers?

14 A. You need to be able to identify the transfers such that you  
15 can eliminate the double-counting.

16 Q. Going back to the upper box --

17 MR. QUINN: We can put the slide back up on the screen.  
18 Thanks.

19 BY MR. QUINN:

20 Q. The upper box labeled "Non-Individual accounts," why is it  
21 important, as far as understanding collections into the system  
22 and disbursements out, to have an understanding what happens to  
23 funds in the upper box on your diagram?

24 A. Some of those monies will eventually be transferred down to  
25 individual accounts, but some of those monies will be paid out

1 of the non-individual accounts.

2 MR. QUINN: If we could put DX-33 back up on the screen  
3 for just a moment. It's in evidence. And go to the right-hand  
4 chart at the top. Zoom in at the top, please.

5 BY MR. QUINN:

6 Q. Ms. Herman, you've seen this document before. Right?

7 A. Yes, I have.

8 Q. And could you interpret this document in terms of your  
9 diagram, what it's showing in terms of the disbursements and  
10 where money is going in terms of your diagram?

11 A. Could you move it down, please, a little bit? Thank you.

12 This diagram is referring to the category of  
13 collections for this particular year. And there were total  
14 collections of \$7.65 million, and of those it gives three  
15 categories of disbursements; one, paid directly to Indians by  
16 disbursing officers; two, monies returned to unsuccessful  
17 bidders; and three, checks drawn by Indians on bank accounts.

18 Q. Out of that example, is there any part of those  
19 disbursements that fall into your upper box?

20 A. At minimum, the monies referred to as returned to  
21 unsuccessful bidders would be included in that upper box.

22 Q. Do you have a sense of what percentage that makes up of the  
23 total disbursements in that year?

24 A. It's roughly 35 percent.

25 Q. Let's go to your third slide and talk about the right third

1 of your diagram. Describe what this slide shows.

2 A. This slide illustrates the disbursements from the IIM system  
3 and the type of entity that may be receiving those monies.

4 Q. And at the bottom you have a notation about "Total  
5 disbursements." Could you explain what your notation means?

6 A. From 1887 through 2007, there's approximately \$13.7 billion  
7 disbursed from the Trust, and from 1985 through 2000,  
8 approximately 4.6 billion.

9 Q. And that subset you're referring to, the \$4.6 billion in  
10 disbursements, what does that refer to?

11 A. Again, that refers to the primary area we focused on from  
12 the electronic time frame.

13 Q. This time period, '85 to 2000, is that the same period you  
14 focused on in terms of collections?

15 A. Yes, it is.

16 Q. And are the same reasons you stopped it, in terms of the  
17 focus of your efforts in 2000 data year, for the same reasons  
18 you described in terms of the collections?

19 A. Yes.

20 Q. On the upper right-hand side there are three arrows pointing  
21 out from the IIM system. Could you describe what they  
22 represent?

23 A. The first is third parties, the second is the Tribal Trust,  
24 and the third is stakeholders.

25 Q. But what do the arrows represent going to those boxes?

1 A. I'm sorry, the movement of money from the IIM system to  
2 those categories of individuals or entities.

3 Q. Are you indicating there that that's movement of money out  
4 of non-individual accounts?

5 A. That's correct.

6 Q. This is money going out of the IIM system from  
7 non-individual accounts?

8 A. That's correct.

9 Q. So the converse of that is, that's money that not going out  
10 of individual Indian accounts in the IIM system?

11 A. Yes. Those funds would not have been transferred down to  
12 individual accounts.

13 Q. Let's go over the three boxes and what they represent in  
14 terms of the disbursements. The box at the top right is labeled  
15 "Third parties." Who are third parties?

16 A. That would represent the return of bid deposits to an  
17 unsuccessful bidder; return of bonds, for instance upon  
18 completion of a lease; payment of administrative fees to the  
19 government for managing the lease. Things of that nature.

20 Q. Any other examples you can think of, sitting here?

21 A. I've seen payments of wages by a tribe to an employee.

22 Q. Have you seen indications of disbursements to Boy Scouts or  
23 Girl Scouts?

24 A. Yes, I have.

25 Q. I have a sense of the Tribal Trust, but could you describe

1 what that depicts, the next box down?

2 A. There's significant amount of money transferred out to the  
3 Tribal Trust from the IIM system.

4 Q. And when you say Tribal Trust, you're talking about that  
5 other trust system set up for handling tribal money?

6 A. That's correct.

7 Q. The last box in that top set of three are stakeholders.  
8 Describe what this box refers to.

9 A. This includes direct payments. One of the larger categories  
10 would be of judgment or per capita monies or direct pay leases  
11 that are made from the non-individual section of the system.

12 Q. Are there other types beyond judgment/per capita?

13 A. I've seen leases paid directly from the non-individual  
14 accounts.

15 Q. How about, have you seen loan proceeds?

16 A. I'm sorry, I'm not clear on the question.

17 Q. I'm sorry. Have you seen land sale proceeds paid that way?

18 A. Yes, I have.

19 Q. Last fall we heard testimony about direct pay arrangements.  
20 When you talk about stakeholder -- payments to stakeholders, are  
21 you referring to the direct pay arrangement?

22 A. No, not in this same context.

23 Q. How are they different? How are these different from direct  
24 pay arrangements, to your knowledge?

25 A. These are monies that actually entered into the IIM system,

1 and are being paid out from the non-individual accounts.

2 Q. But how are they similar to direct pay arrangements?

3 A. The funds are never transferred to an individual money  
4 account, a land-based account, for instance.

5 Q. The last box, the lower -- bottom box on your right-hand  
6 side says, "IIM beneficiaries." Could you describe what that  
7 illustrates?

8 A. These would be payments made from individual accounts to IIM  
9 beneficiaries or on their behalf.

10 Q. And what do you mean by "on their behalf"?

11 A. For instance, if an account holder is a minor, you may see a  
12 payment for school clothing or medical care.

13 Q. Now, on your slide -- it's not on your poster, but on your  
14 slide, the last frame there, you have a large bracket around all  
15 three boxes, with the indication of "Total disbursements." Can  
16 you describe what that illustrates?

17 A. That illustrates that the total disbursements for all four  
18 of those categories is 13.7 billion from 1887 through 2007.

19 Q. So is it correct, then, when you talk about total  
20 disbursements, you're talking about total disbursements out of  
21 the IIM system?

22 A. That's correct.

23 Q. Let's see if we can just recap on your illustration. With  
24 respect to the collections in your green box, does that include  
25 money, some money coming into the IIM system that is never

1 destined for deposit into an individual IIM account?

2 A. That's correct.

3 Q. Would I be correct to say that based on your own  
4 observation, that many credits that are posted to the IIM system  
5 involve the upper box, the non-individual accounts?

6 A. That's correct.

7 Q. And when something posts as a credit to the non-individual  
8 account box, does that mean it's, in that sense, in that  
9 transaction, not a posting to an individual IIM account?

10 A. That's correct.

11 Q. In terms of your description here and your diagram, you have  
12 the non-individual accounts. And when you talk about the  
13 character of money being non-individual, how is that determined?  
14 I mean, how do you classify something as non-individual?

15 A. It's determined based on the type of disbursement. So if  
16 the monies flow down to an individual account, it would be  
17 considered individual. Or if it's moving out of the system to a  
18 third party or the Tribal Trust or a stakeholder, it would be  
19 considered non-individual.

20 Q. So that in a sense, then, the non-individual character of  
21 the money is determined by its destination?

22 A. That's correct.

23 Q. And that non-individual money includes money going to third  
24 parties?

25 A. That's correct.

1 Q. And to tribes?

2 A. That's correct.

3 Q. Unsuccessful bidders --

4 A. That's correct.

5 Q. -- and so forth? Okay.

6 Why is it useful to understand this part of the flow of  
7 funds through the IIM system?

8 A. To be able to determine the amount of monies that are  
9 actually deposited at the end of the day to individual accounts  
10 within the system.

11 MR. QUINN: Could we put DX-365 for a moment?

12 BY MR. QUINN:

13 Q. I just want to ask you about one document that was discussed  
14 at the last trial, DX-365.

15 MR. QUINN: Could we zoom in on the top half of the  
16 box, so we get the label?

17 BY MR. QUINN:

18 Q. Can you see that Ms. Herman?

19 A. Yes, I can.

20 Q. Have you seen this document before?

21 A. Yes, I have.

22 Q. Let's talk about it in terms of your document AR-171 and the  
23 work you've done, as far as the update to it that we'll be  
24 presenting to the Court.

25 Did you use any calculations from DX-365 in revising

1 the table, doing the revising of information on AR-171?

2 A. No, I did not.

3 Q. Have you -- looking at the table, on the far upper part of  
4 the chart, A, it has a column identified as "Total collections."  
5 Do you see that?

6 A. Yes, I do.

7 Q. And at the bottom number it has a number of 13,186,000,000.  
8 Right?

9 A. That's correct.

10 Q. What's your understanding of what that number includes?

11 A. That that's the total collection number from AR-171, less  
12 Tribal IIM monies.

13 Q. So less Tribal IIM. Does that mean we're talking about that  
14 one column that was in AR-171 as -- denominated as Tribal IIM?

15 A. That's correct.

16 Q. So based on your study of the flow of funds through this  
17 system, does this total that's indicated here, does that exclude  
18 or include the other tribal monies you've seen through this  
19 system that are not denominated as IIM?

20 A. This would include those other tribal monies.

21 Q. That would include those other tribal monies.

22 Would it include things such as bid deposits?

23 A. Yes, it would.

24 Q. Would it include undifferentiated interest, interest that  
25 you couldn't determine was interest at the time you did the

1 calculation?

2 A. All interest is included in this number.

3 Q. So in terms of your -- of this collections figure, it  
4 doesn't exclude everything that's in the non-individual accounts  
5 that you've identified in terms of fund flows over the history  
6 of the IIM system. Is that right?

7 A. That's correct.

8 Q. Can you think of other things that didn't get deducted out  
9 of that total collections number, as far as you know?

10 A. For instance, the direct payments for judgment monies that  
11 were made that we were referring to, the stakeholder payments,  
12 things of that nature would not have been deducted.

13 Q. As a consequence of including these other non-individual  
14 monies in the collections figure on this DX-365 figure, what  
15 does that do to the total collections number?

16 A. It would overstate collections to individual accounts.

17 Q. So is it fair -- if you go down to the bottom chart, in  
18 Part B there's a list, do you see that, of estimated credits to  
19 IIM accounts?

20 A. Yes, I do.

21 Q. Of 10 billion. Are those numbers comparable to one another?

22 A. No, they are not.

23 Q. Did you participate in -- did you prepare this DX-365 chart?

24 A. No, I did not.

25 Q. Have you used the computations in here as part of your

1 update to AR-171?

2 A. No, I have not.

3 Q. Based on what you know about the calculations you've made in  
4 AR-171, does the chart in DX-365 also include  
5 individual-to-individual transfers?

6 A. Yes, it does.

7 Q. In your flow of funds chart, DX-375 -- or 370, excuse me,  
8 does that diagram indicate how total collections as represented  
9 in DX-365 could overstate the amount of individual Indian  
10 account money that was in the system?

11 A. Yes, it could.

12 THE COURT: Mr. Quinn, it's 5:00 o'clock and I have  
13 another matter that I have to attend to. And besides which, you  
14 have about reached my plateau with these numbers.

15 MR. QUINN: I try to make it interesting, Your Honor.

16 THE COURT: Well, it's fascinating. But at 9:30  
17 tomorrow morning, we will start again. And I think I'm going to  
18 need a little bit of re-grounding in what this exhibit is, the  
19 one you've got up on the screen.

20 MR. QUINN: Okay.

21 THE COURT: Because I'm not quite sure I -- frankly, I  
22 think I missed where this comes from and how it relates to the  
23 other stuff. So let's start with that fresh at 9:30.

24 Thank you, everybody, for your attendance today. We'll  
25 be in recess until 9:30 tomorrow morning.

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MR. QUINN: Thank you, Your Honor.

THE WITNESS: Thank you, Your Honor.

(Proceedings adjourned at 5:06 p.m.)

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**CERTIFICATE OF OFFICIAL COURT REPORTER**

I, Rebecca Stonestreet, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

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**SIGNATURE OF COURT REPORTER**

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